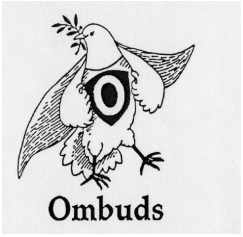

THE UNIVERSITY OF CALIFORNIA, SANTA BARBARA
OMBUDS OFFICE

Campus Ombuds: What do they do, and how do they do it?:

THE CASE STUDY PROJECT

A Work in Progress

Presented at the 2002 CCCUOA Annual Conference, Asilomar Conference Grounds
THE RIGHT STUFF: the Habit, Heart and Science of Ombudsing

Director: Misa Kelly, Assistant Ombuds, UCSB

Participating Ombuds: Frances Bauer, Thomas Bailey, Andrea Briggs, Vicky Brown, Jenna Brown, Gary Buckley, Michael Chennault, Suzanne Chappellet, Donna Clark, Martine Conway, Claudi D'Albini, Sandra Duncan, Alice Earp, Eleanor Funk, Rosa Garner, Tim Griffin, Helen Hasenfeld (fictitious case studies presented at past conferences), Tommie Howard, Tuesday Hambrick (when time permits), Gary Insley, Noor Khan, Misa Kelly, Shelly Lancaster, Alan Lincoln, Larry Lunsford, Molly McAvoy, Elizabeth Novack, Bonnie B.C. Oh, Savander Parker, Susan Rademacher, Patrick Robardet, Marthanne Robson, Mary Rowe, Jennifer Walters, Linda Wilcox, Geoffrey Stearns, Ned Schillow, Tom Sebok, and Bob Shelton.

Dear Misa,

I believe that the Case Study Project will make a significant and continuing contribution to the quality and efficiency of Ombuds offices. Nice going!

Stan

(note from: Stanley V. Anderson, Ombuds Scholarship Pioneer,
Professor Emeritus, Political Science, UCSB)

Special thanks to:

the participating ombuds who have contributed thus far and to those who will contribute in the future.

Special thanks to:

Stanley V. Anderson, Michael Chennault, Jan Schonauer, Lois Price Spratlen, Geoffrey Stearns, and Geoffrey Wallace for their mentoring, inspiration, and support.

And…a very special thanks to Betty Chung and William Han for the nitty gritty work of data entry!!

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HOW TO PARTICIPATE

If you would like to participate in the Case Study Project, please contact Misa Kelly at the UCSB Ombuds Office. Following is the pertinent contact information.

Address: Ombuds Office
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Email: kelly-m@sa.ucsb.edu

Website: http://www.sa.ucsb.edu/ombuds/

Comments, thoughts, and suggestions are readily welcome and integrated into the project.

ABOUT THE PROJECT

The Case Study Project was launched in the spring of 2002 along with the Ombuds Profile Project. While the Ombuds Profile Project answers the question: Ombuds: who are they?; the Ombuds Case Study Project attempts to address the question; Ombuds: what do they do and how do they do it?

The idea for the Case Study Project sprang forth from an observation that while there is an abundance of case studies in the field of mediation being utilized for educational purposes, there is a scant supply in the field of campus ombudsing from which to learn. I found that while Canadian Campus Ombuds tend to include case studies within their annual reports, American Campus Ombuds do not. I imagine this is a matter of style as well as a matter of maintaining confidentiality: one of the fundamental building blocks of a campus ombuds practice.

In order to create a resource that would inform ombuds educational processes I decided to gather a collection of case studies that would illustrate through articulation of process the work of the ombuds in an academic setting. I was greatly encouraged by a question posed by UCSB ombuds scholar Stan Anderson in his article "Ombudscholars".

Anderson asks:

"How can Campus Ombuds offices utilize their experience to educate one another and to inspire education?"

He answers his own question with the following:

"One way would be to provide reports of actual cases (redacted for confidentiality)."

In spring of 2002 a call for case studies along with the Ombuds Profile Questionnaire were sent to 103 campus ombuds in the United States, Canada, and Australia (65 women, 32 men, 6 to "ombuds offices" without ombuds listed). Of the 103 ombuds, 39 ombuds expressed a desire to participate (26 women, 16 men). Each ombuds was asked to contribute three case studies.

In order to accommodate ombuds busy schedules no deadline was imposed for receiving materials. To date I have received 66 cases from four ombuds (3 men, one woman).

Our office is currently working on preparing to make this work available online. We have set as a goal January of 2003 to get the Case Study Project up and running along with the Ombuds Profile Project (http://www.sa.ucsb.edu/ombuds/). The website will be updated bi-annually to incorporate new works received from participating ombuds.

WRITING A CASE STUDY

If you have never written a case study it may be difficult to know where to start.

Following are a few guidelines to help you in your writing process. Assistant Ombuds, Misa Kelly, is available to answer any questions that arise (805) 893-3285. To submit case studies to be posted on the UCSB Ombuds website please send the case studies via email to Misa Kelly at kelly-m@sa.ucsb.edu.

Happy Writing!

CASE STUDY GUIDELINES

Purpose of Writing Case Studies: To Inform the Ombuds practice. To articulate what ombuds do and how they do it.

Length: 1 to 2 pages. If the case is simple and straight forward it may only take 1/2 a page. If the case is intricate and complex, and spans over a great length of time, the length might be longer than 2 pages.

Type of Case: Your choice. You might want to peruse the existing cases listed under Case Studies for inspiration.

What to include:

- How the visitor came to the Ombuds office (referral, walk-in, telephone call, web page)
- A concise synopsis of the essential facts of the presenting problem. If your office keeps track of ethnicity, whether the visitor is staff, student, faculty, or other intake information let this be reflected in the synopsis-redacted for confidentiality.
- Impressions of the initial interview.
- Guidance given in the initial interview.
- Policies, Rules, Regulations involved.
- Steps taken by the visitor.
- Steps taken by the ombuds.
- Later developments/curveballs.
- Newly discovered information.
- Underlying goals/principles/objectives.
- Any nuances/subtleties/tricky maneuvers.

- Collaborators in resolution of the problem.
- What was the outcome.
- Was there any follow-up.
- What did you learn.
- What role did you play.
- Skills utilized.

When writing the case studies it might be helpful to keep in mind the different roles an ombuds plays while carrying out the ombuds basic function of handling complaints.

Following are some ombuds roles defined by UCSB ombuds scholar Stanley Anderson in his paper OmbudsScholars. Stanley V. Anderson's Article *OmbudsScholar*s appears in the CCCUOA "Journal" of 2001.

Informational Role
Complainants who have not yet attempted to resolve their own grievances are instructed by the ombuds as to pertinent regulations and procedures which may facilitate that effort.

Investigatory Role
When the office takes up a complaint, it digs out the facts without further effort on the part of the complainant. The ombuds exercises neutral expertise as a professional factfinder with access to otherwise confidential information.

Legal Aid
Applying the governing rules to the facts at hand, the office proffers the free advice as to options and alternatives both to the complainant and to the authorities.

Leveling the Playing Field
The stature of the ombuds tends to offset either party's advantages of age, rank or experience.

Mediation
Intervention and guidance by the Ombuds often stimulates the antagonists to work out their differences by themselves.

Exculpatory Role
When the Ombuds concludes that a complaint is unfounded, the individual against whom the complaint was lodged may be vindicated.

Therapeutic Role
The disappointment of those whose complaints are rejected (either initially or after investigation) may be soothed by a sympathetic ear and a careful explanation. Complainants are shielded from public embarrassment by the confidentiality of the proceedings.

Remedial Role
Some errors or injustices are rectified.

Reformatory Role
Whether or not a complaint is deemed to be founded, its investigation may lead to suggestions by the ombuds for policy changes, some of which may be adopted.

Continuing Education
In the course of an investigation, the ombuds transmits information up and down the line, educating participants and enhancing managerial control.

Public Defender
When the administration refuses to accept a recommendation for rectification or reform, the ombuds may urge implementation. Because the office is without power to compel, advocacy is focused upon reasoned persuasion. The weapons of publicity is seldom used, but lurks in the background.

Systems Supporting
The overall impact of the ombuds office is to enhance efficiency and to buttress popular acceptance of campus administration, whether by the cumulation of individual satisfactions, by nipping problems in the bud, or by administrative reform. The very existence of a complaint mechanism provides a safety valve.

Credibility
Credibility hinges in part upon the perception of the independence of the ombuds from the pertinent command hierarchy. This is the foundation of impartiality which underlies third-party intermediation.

Emulatory Role
As a model of conflict resolution, an Ombuds office, campus or otherwise, has a potential for inspiration. Documentation and publicization of the several roles of campus ombuds may facilitate emulation.

Additional roles to consider are that of : the change agent, the coach, the advisor, the restorative justice facilitator, and peacemaker. To learn more about the role of the change agent consider reading the following article.

Wagner, M. L. (2000) *The Organizational Ombudsman as Change Agent.* Negotiation Journal 16 (1) pgs. 99-114.

To learn more about the role of the restorative justice facilitator please contact Geoffrey Stearns at (805) 893-3285, or, you might want to track Tom Sebok down at the University of California at Boulder (UCB). UCB was the first major university to establish a restorative justice program. UCB has produced an excellent video about

Restorative Justice. The video can be obtained through Tom Sebok's office and is also available for viewing through the UCSB Ombuds Office lending library.

CASE STUDIES

Frances Bauer, University of Western Ontario

http://www.uwo.ca/ombuds/

A Graduate Student Case
Student Misadvised

(See Frances Ombuds Profile to learn more about her as an Ombuds)

A Graduate Student Case

A graduate student in a wet science area – I'll call him Eddy - came to see me at the suggestion of a fellow student. He said he was discouraged about his rate of progress in his Ph.D. program. He had been admitted to a professional program, but that admission was conditional on completing his Ph.D.

His thesis was to be a series of papers describing a set of experiments. But his supervisor would not let him write the papers. Whenever Eddy submitted a draft, the supervisor "tore it to shreds". In the presence of others, the supervisor's tone was moderate and reasonable, and he appeared to be a wonderful mentor. When it was just he and Eddy, it was another story altogether. This pattern of behavior made it nearly impossible for the student to get more support in the department.

After listening to Eddy's story, I asked him if he had reviewed the document, Principles and Guidelines of Graduate Supervision. I explained that this document, posted on the Graduate Studies website, provided a good blueprint for the rights and responsibilities of students and supervisors. In addition, I helped Eddy strategize about how to handle the supervisor more effectively. These strategies included discussing the problem with the Associate Dean of Graduate Studies, or asking me to meet with the supervisor or arrange a mediation, or being proactive with the supervisor himself and negotiating clear deadlines.

Eddy visited me on several subsequent occasions. He never asked me to speak to his supervisor. What he needed was a safe place to vent his anger at what he perceived to be self-indulgent, self-serving and abusive behaviors on the part of his supervisor. I raised the issue of his own behavior, and how he seemed to be nurturing his own rage. I asked him outright if he had thought of seeing a counselor. He had done this in the past, and did not want to do it again.

Several months passed and I did not hear from Eddy. It is not my practice to take the initiative to follow-up unless I have a prior agreement with the student to do that. Finally he popped in. He looked more relaxed; in fact, he looked like a completely different man. His thesis defense had gone well and he was off to professional school – and very grateful for my help!

Eddy was typical of many graduate students I have seen. The challenge for the Ombudsperson is the frustration at not being able to intervene and fix the problem. Many graduate students fear retaliation if they involve someone from outside the program in a problem. However, students are tremendously in need of being able to talk at length to someone in complete confidence, in particular someone who understands how graduate school works, who has no vested interest in the outcome, and who can suggest resources and strategies. Over the years, I have come to realize that these apparently do-nothing situations nevertheless allow the Ombudsperson to contribute real value to both the student and the school.

Student Misadvised

The student – I will call her Nina – came to the Ombuds Office late in the academic year at the suggestion of a fellow student. She explained that she had taken a web-based course from a private occupational school the previous summer with the approval of her academic advisor, Dr. X. Dr. X had failed to alert Nina to the procedures to be followed in taking a course from another institution, and when she subsequently applied for credit for the course, it was denied.

Nina had met with the Department Chair and with the instructor of the required course for which the summer course was supposed to be a replacement. She registered for the required course, but it was her understanding that she would not be expected to complete all the assignments, given the fact that she had basically covered the material in the course for which credit had been denied. She provided the instructor with all the work she had completed for the web-based course, so he could satisfy himself that she had indeed covered much of the material.

She came to the Ombuds Office because she was frustrated that she was being asked to complete all the work, and also frustrated that she had spent so much time and money on a course which could not be credited because her academic advisor had not followed the correct procedure. (The correct procedure was to complete a Letter of Permission form and have it processed by the Dean's Office. The Dean's Office would have realized that credit was only given for courses from accredited universities – not from private occupational schools. Thus, the student would have been alerted to not take the web-based course.)

Nina provided copies of letters and emails between herself and the Department Chair to the Ombudsperson. Nina had mentioned her out-of-pocket costs in her first letter to the Chair, but he confined his response to the academic requirements of her. Nina reported

the Chair had been verbally dismissive of the costs issue and given the impression that he believed the student should have taken more initiative in finding out the correct procedure.

The Ombudsperson agreed to look into the matter. Her first steps were to leave a message for the instructor, and a message at the Dean's Office. Although the instructor did not return the call, the student herself met with him and he agreed to relieve her of doing some of the assigned work until the end of the year. An advisor from the Dean's Office called and essentially confirmed the student's account. The advisor also confirmed that faculty members acting as academic advisors were supposed to complete the Letter of Permission form and direct a student to the Dean's Office, unlike the absent-minded Dr. X.

The Ombudsperson also spoke to Dr. X. He, too, confirmed Nina's story. The Ombudsperson said that, in her opinion, it would be fair to reimburse Nina for her out-of-pocket costs – but she did not think Dr. X himself should have to pay. Dr. X was relieved to hear that.

The Ombudsperson then contacted the Dean and explained the situation to her. She encouraged the Dean to speak to the Chair and to the advisor in her own office in order to confirm the facts, and she recommended that Nina's out-of-pocket costs be reimbursed. The Dean agreed to reimburse all costs upon presentation of receipts.

This was a case with some interesting outcomes. First, the overriding policy that the student is responsible for knowing all the published academic regulations and procedures was set aside in light of the error made by her academic advisor. Second, the Faculty in question realized that its academic advisors might need some systematic training, in order to avoid such costly errors in the future. Finally, the Ombudsperson made the point in discussion with the Dean that while the Faculty was reimbursing Nina's out-of-pocket costs, there was no way to remedy the opportunity costs of Dr. X's mistake. If he had not erred, Nina could have taken an appropriate course that would have been credited.

It was essential in this case that the Ombudsperson be perceived as impartial, and not as the student's advocate. At the same time, a resolution was facilitated because of a good working relationship between the Ombudsperson and the Dean.

Jack Kelso, Faculty Ombuds, University of Colorado at Boulder

http://www.colorado.edu/Ombuds/press.html
(See Jack's Ombuds Profile to learn more about Jack as an ombuds)

The Case of the Dysfunctional Department

Connie opened the letter from High Plains University; she knew it contained the official offer of a position as tenured Professor of English and Chair of the Department. She had been expecting the letter and intended to accept the offer. She got an earful from the faculty on her visit to the campus. The litany of problems sounded like the same conditions one might find in every other department of which she was aware: low faculty morale, virtually no sense of community, older faculty resented the high salaries of more recent hires, the literary critics held the literature and creative writing profs in low regard, they had their share of deadwood, untenured faculty feared retaliation from tenured colleagues, some faculty were perceived by others as arrogant in their disregard for their responsibilities and privileged in having lighter workloads and greater access to staff support, and a few of the favorites were allowed to be away from campus far more than others and without suffering any apparent sanctions from the Chair or the Dean.

In general the faculty placed the blame for their present problems squarely on the doorstep of Bill Clement, the current Chair who had been in that position for many years. Clement was a nice enough person and he had played a huge role in building the department in the early years of his time in the Chair, but the field had passed him by, his publication record ended a decade ago, and in recent years he seemed to grow more remote, more defensive, and increasingly preoccupied. Clement just did not appear any longer to have the energy or the interest required to deal with the problems that crop up all the time, and more importantly seemed uninterested in leading, in projecting and pursuing some vision toward which the department might direct itself. The faculty saw him as the source of most of the department's current problems and last fall, after a visit from the Mandarins in the Department, the Dean asked Bill to step down at the end of the current academic year.

But Connie Parks was not afraid to tackle problems; she was indeed excited by the challenge and this appointment would be a big step up professionally and financially for her. In her heart she believed that HPU needed what she had to offer.

Connie is a single parent, the mother of twin teenage daughters. She was awarded her Ph.D. from Howard University in 1983, coincidentally the same year as Bill Clement became Chair of the English Department at HPU. She and the girls left Washington, D.C. (and the girls' father) that same year when Connie assumed her position at Prairie State College. In sharp contrast to HPU, Prairie State places little emphasis on scholarly publications in peer reviewed journals. Connie nonetheless had published 42 papers, many reviews, and two books on critical theory. Her first book, published ten years ago, linking the poetry of Shakespeare to that of T.S. Eliot,

brought her a great deal of attention and was still considered a model of modern critical analysis. Over the years she'd had several overtures from universities throughout the country but she had no interest in moving from Prairie State before her daughters finished high school, an event which would happen now in less than two months. Now was the time and HPU was the place.

There were, however, some things about the situation at HPU of which she was unaware.

"Well somebody should tell her what's going on here. It's just not ethical to wait until she gets here. She should know what she's up against." The speaker is John Williams, a tenured long-time member of the HPU English Department who's been stuck in the rank of Associate Professor for over ten years. Though generally impressed by her credentials, Connie was not the first choice of the faculty and, after being turned down by two more highly rated candidates, the vote to extend her the offer succeeded by the slim margin of 3 votes with 20 in favor, 17 opposed and 8 abstentions. The demographics of the vote were interesting all by themselves. The all white faculty consists of 39 males -- twenty of whom are tenured -- and 6 females of whom two are tenured. All but one of the women (a tenured woman as it happens) voted in favor of offering Connie the position. The fourteen males that voted with them consisted of 6 who are tenured and 8 who are not. Those opposed to offering her the position said they feared that Connie didn't have the strength to stand up to the Dean and that she lacked the administrative experience the job required. There were also concerns expressed about her lack of vision, her low key style. Those who voted in favor of offering her the position suspected, however, that some among those opposed were fearful of hiring someone with a better record of scholarship than they themselves had and that some held a strong gender bias.

Professor Williams, one of those who abstained, took a sip of Yuban before continuing, "I am certain that Jennifer and Lara will go after Jim Turner for sexual harassment or professional misconduct or both; it's a sure thing to end up in court. And I doubt if she knows that the Graduate School has a motion under consideration to suspend our Ph.D. program. How would you like to walk into a mess like this?"

Williams is talking to Bob Lewis, one of the lit profs brought in during the early years of Bill Clement's tenure as Chair. Lewis, unhappy about his salary and unhappy about being turned down twice for promotion to Full Professor, was the leader of the movement to get rid of Clement.

Lewis responds, " Frankly I don't give a damn. I hear the Dean offered her a salary way beyond what anyone else makes in the department and on top of that she doesn't have to teach any courses for two years and after that she's only obliged to teach one course per year. ONE COURSE PER YEAR, for Christ's sake!. He expects her to come in here and straighten us all out. She can damn well find out whatever she needs to know if she wants to. As far as I'm concerned she knows what she's getting into and at that salary I'm just gonna let her fix the problems."

_____PAUSE_____

Would you advise Professor Parks to take this job offer?

Is the situation, as far as you can tell from this brief description, serious enough in the English Department for the administration at HPU to take action? If so, what action do you think the administration should take? Or does it appear to be something a new Chair should be able to deal with?

What would you say are the underlying issues here?

Six Months Later

Professor Parks had persuaded the Executive Committee of the Graduate School to postpone suspending the English Department's Ph.D. program and, after talking first to Professor Turner and then to Assistant Professors Jennifer White and Lara Goodman, she felt confident that the tension had eased over the sexual harassment and unprofessional conduct issues. Indeed Professor Parks felt rather pleased with the calm that seemed to have descended over the department. Yet two issues continued to concern her. The first involved the tension between tenured and untenured faculty. All but one of the untenured faculty appeared to be publishing enough articles and teaching well enough to get by the tenure review without difficulty if they continued on the course they had set for themselves. Connie had had a talk with the one who was likely to be turned down – Lara Goodman as it happens -- but was not much encouraged by her reaction which was in general to blame others for her deficiencies. She regarded the departmental environment as not at all helpful and said she had heard that the senior faculty "had it in for her" because they did not respect her work, her interest in feminist issues, and were unwilling to accept as credible the few articles she published all of which were in journals that were neither "mainline" nor peer reviewed.

The second area of concern was the uneven productivity, specifically the low output of publications by four or five of the senior faculty. Indeed Connie's view of the whole department was that they just didn't work very hard. Even the "stars" spent much of their time away from campus, regarded teaching as a distraction, helped not at all with the maintenance activities which every department must meet, and when you looked at their research productivity it wasn't that impressive. Oh, one or two of the senior professors were well known among their peers across the country, but even they seemed to be coasting along on one or two contributions they had made early on in their careers.

When she tried to describe the situation in the English Department to herself, she thought it's biggest problem was that it wasn't going anywhere. It was stuck. People worked alone, pursued their own personal interests, complained a lot about others not carrying their share of the load, but otherwise shared little social interaction with one another. She approached the Dean with her concerns and asked for her advice.

_____PAUSE_____

If you were Dean what advice would you give Chair Parks? Are there any courses of action you would want to be especially careful to advise her NOT to follow?

Should she be concerned about these issues or simply take care of it in the annual round of faculty evaluations and recommendations for salary increases?

How do you get faculty to do more work? to do better work? How do you encourage them to be helpful and civil to one another? or is an improved environment of greater civility too much to expect?

If you were able to visit the English Department of High Plains University in the year 2010, in what ways would you expect the conditions to be different?

In what ways SHOULD they be different if the Department has solved most of its problems, and is functioning smoothly?

Richard A. Russell, Ombudsperson Emeritus, McMaster University
Submitted by current Ombudsperson, Shelley Lancaster
http://www.mcmaster.ca/ombuds/

58 Assorted Cases Arranged by Subject and Year

McMaster University 1988-89 Annual Report
Richard A. Russell

ADMISSIONS INQUIRIES

Inquiry #88-12/02 (1)

A former McMaster student, who was forced to withdraw for personal and medical reasons prior to the completion of her programme, approached the office concerning her desire to obtain a Letter of Permission to complete her programme through another institution.

She had been readmitted to her programme at McMaster, on a probationary basis, but had moved out of the area and taken on personal commitments which prevented her from completing her requirements in Hamilton. Her initial request for a Letter of Permission had been denied at the time of her readmission. She wished to appeal this decision.

I contacted the appropriate Associate Dean's Office and inquired into whether the applicant's initial request had been pursuant to a Petition for Special Consideration and whether the Faculty would be prepared to entertain a further Petition if that were the case. I was able to indicate that there was further medical information concerning the student's withdrawal and information available concerning more recent developments in the student's life which might have some bearing on the issue. The academic advisor readily agreed to permit the student to re-petition in light of this new information.

The student was contacted and advised of both the appeal provisions of the Student Appeal Procedures and the provisions for petitioning faculty for special consideration with a strong recommendation that she pursue the latter course and file further documentation of a medical nature. The student followed this recommendation and the reviewing committee granted her request to complete her remaining eighteen units under a Letter of Permission.

Inquiry #88-09/19 (2)

A student came to inquire about a decision he had received from the Director of a professional school of the University. The student had completed a three year

baccalaureate degree the preceding term and was in the midst of completing a second pass degree in the School. It was his intention to apply to a graduate school upon completion of his three year degree and he wished to complete an intensive honours thesis course in order to demonstrate his ability to do advanced scholarly work in the discipline.

During the previous term he had approached the Chairperson of the committee of instruction about the possibility of registering this course and was advised that, although strictly speaking, the course was designed for persons in an Honours or Combined Honours programmed, some students in the pass programme had been permitted to take it in the past. He was cautioned, however, that the policy was under review and was subject to change.

The student was advised early in the term that he would not be permitted to register in the course, because it was designed for those persons registered in the course, because it was designed for those persons registered in Combined Honours programmes. It was suggested that the student register instead in a three unit independent study course at t lower level.

The student initiated an Inquiry concerning that decision through his Dean of Studies, claiming that several students had been granted permission to take the course while enrolled in the pass programme.

I contacted the Director, to determine whether there were any other reasons for the decision other than those expressed in correspondence with the student. She said there were no other reasons but was prepared to expand upon those reasons. She indicated a concern that by allowing the student to take the course, she would be complicit in his misrepresenting his actual accomplishments at McMaster. She was interested in preserving the integrity of the honours level programme offered at the University and in ensuring that the student was not granted admission into graduate school at another university on the strength of the independent research course alone.

I indicated it was my understanding that several other students had received the accommodation that was being sought during the last two years and asked what distinction there was between their cases and that of the complainant.

The Director admitted there was, in fact, no real distinction between this student's situation and that of several others, excepting that in the interim, the School had adopted a policy that was inconsistent with past practice. She felt that since the programme in question was relatively new, it was necessary for some policy to be made on an ad hoc basis and that such policy must be subject to review from time to time.

It was suggested that a reasonable compromise might be to permit those students who entered the programme prior to the promulgation of the regulation in question to have the benefit of the more generous ad hoc policy and to require all students who entered the school subsequent to its passage to abide by it. In the case of the latter group there could

be no question of detrimental reliance upon the policy. The student's transcript would no doubt indicate that the degree awarded was a pass degree and would not be misleading in that respect. If a graduate school chose to admit on the basis of one fourth year grade, surely that was a matter for the institution in question and not of McMaster's concern, so long as its transcript was unambiguous.

Ultimately, the Director granted the complainant's request and the student's appeal was withdrawn.

The McMaster Test of Writing Competence

Inquiry #88-10/04 (3)

A student, who was a second degree student registered in a pass baccalaureate programme at McMaster, approached the office concerning the requirement that she write the McMaster Test of Writing Competence (MTWC). She had completed her first degree at a well recognized out of province university and had good marks in a Classical Civilization programme. She felt it was a waste of resources to require her to complete the test in light of her demonstrated ability to communicate effectively at the University level.

She was referred to the office of the Senate Secretariat and to the Associate Dean of her faculty. She was advised by her Associate Dean that he had no authority to grant an exemption to the Senate Regulation and it was suggested to her that she petition Senate. She ultimately wrote and passed the test.

Given that the various faculties are less than unanimous in their endorsement of the test (currently only Engineering and Social Sciences require it to be passed prior to completion of their respective programmes) it would make sense to allow some discretion to the various Deans of Studies to exempt students who have clearly demonstrated writing skills. Certainly the successful completion of a bachelor's programme at a recognized institution, in a language intensive discipline may equal or exceed the attainment of an 80% average in an Ontario Grade 13 or OAC English course.

CLASSROOM PROBLEMS

Students increasingly approach the University, Students Union, and Ombuds Office as paying consumers looking for service. This is, in many ways, a salutary phenomenon because it causes them to expect more from these institutions which exist, in large part at least, to serve them. The following case illustrates the limitations of this approach to obtaining an education.

Getting Your Money's Worth in the Classroom

Inquiry #88-11/04 (4)

The student presented a concern that she was not receiving value for money in a course for which she was registered. During the first class of term the instructor lectured for only 30 minutes of the three hour session.

At that initial class, he indicated he would be requiring either two short papers of 5 to 6 pages each or one longer 10-12 page paper. In a subsequent class he indicated that, because of the size of the class, he would be requiring only one paper seven pages in length. This individual did not feel that she could properly deal with the topics provided in a paper of that length.

In addition, the instructor had already indicated he did not intend to cover all of the material described in the academic calendar and had advised some of the students in the class not to read one of the prescribed texts.

The student had concluded that this particular instructor was lazy. She wanted to know what she could do.

Careful probing revealed that the complainant did to attend the tutorial sessions which followed the lectures. She was too busy. It was suggested to her that if she felt the breaks taken by the lecturer were too long and as a result material was not covered which otherwise might have bee, she could bring this matter up before the Chairman of the department in which the course was offered. It was explained that instructors retain a substantial measure of discretion in how they structure and teach their courses based on the principle of academic freedom. It was unlikely that her case would be treated as sympathetically in light of her not taking advantage of all of the instruction available to her in the form of tutorials.

The student was encouraged to speak to the instructor concerning course material that she had a special interest in seeing covered.

The question of the length of the essay used to evaluate the student was identified as problematic. The use of a longer essay format did not necessarily require more or better research on the part of the student. Brevity in writing often requires that a person know his/her subject matter well. She was urged to speak to the professor concerning that requirement as well.

The inquirer did approach the instructor, who agreed to accept an eight page paper in place of the shorter essay. The student did not express her concerns about course

coverage of material or classroom time because she feared reprisals. She was encouraged to note her concerns in a letter to the instructor at the end of term.

Although this inquirer did not feel satisfied that as a "consumer" of educational services she had received the full benefit of her bargain, she did, I hope, gain some insight into the unique nature of the "product" she was buying and her participation in the process involved.

Inquiry #88-09/06 (5)

The inquiry was from a student new to McMaster. She was enrolled in a first year language and literature course. Her first assignment was to write a report on a film which depicted a classic fictional work in the language. She attended a local cinema with the rest of the class to view this film. Attendance and the report were mandatory.

The student found the film obscene and sacrilegious. It was particularly strong in its condemnation of the church of which this individual was a member. She had been very upset and offended by it and did not know how to go about preparing a report. She wanted another assignment substituted for it.

This person was genuinely shocked by what she had seen. She thought the film was a modern critique of the church without literary merit.

Based upon the information provided I was able to determine that the film was indeed based upon a well known literary work of great importance in the development of the language. This information reassured the individual somewhat but she still did not know how to go about her report.

The student was advised to speak to the instructor about her concerns and ask why this particular work had been chosen for a review. She was encouraged to consider the legitimate goals which the instructor may have had in mind in setting the assignment. She also was to request some assistance in developing an "approach" to the film.

The student did contact the professor, who was very understanding of the concerns expressed by her. The reasons for assigning that particular film were explained to the student's satisfaction and a critical approach to the report was also discussed. The student submitted the report and did well. She felt her time had been well spent in approaching the instructor and in contacting the Ombudsman.

PROBLEMS IN NON-CLASSROOM SETTINGS

Inquiry #88-10/09 (6)

A student in a programme with a field placement component attended the office concerned because her evaluation by her field instructor indicated that she lacked

fundamental tools for the performance of her responsibilities in the placement. The field instructor indicated that these deficiencies would probably cause her to fail her placement, which was a required component of the programme she was studying; she was also told that she should seriously reconsider her plans to work in her field of study.

The student felt that the manner in which she was evaluated had been unfair and that the field instructor and she were incompatible. She had received excellent evaluations for earlier field work and had good marks in her programme. She was very upset at being told that she should reconsider her vocational aspirations based upon an extremely limited, and in her view, suspect assessment of her work.

The student was assisted in preparing a letter to the Director of the programme, requesting that a committee be established to assess her situation and to suggest a more positive alternative for her to explore. The student was concerned that if she were to withdraw from the placement, she may not be permitted to register in the next term's placement course.

A meeting was convened approximately one month after her initial consultation. The meeting included the student, student's counselor, field instructor, instructor's supervisor, seminar leader, programme Director and the Ombudsman. The major issues as identified by both the student and the field and seminar instructors were canvassed. Ultimately, it was agreed that the student would be given a new placement in the spring term and that the problems identified in the first placement would be noted and attention would be give to them in the second term's placement.

The student contacted the office the following term and indicated that she was very pleased with her new placement and was receiving good assessments and grades in both the seminar and placement.

GRADING

Assignments and Essays

The great majority of inquiries and complaints to the Ombudsman pertain to academic issues in the areas of programme, grading, and instruction. Of these, grading is the most prevalent. This phenomenon reflects the priority that most attach to their marks and the need that most students have to ensure that they have been graded fairly.

Inquiry #89-02/14 (7)

A number of students from one section of a required course in a professional programme approached the office with a concern about mark equity. They had been students in the first term section of a course which used a computer programme to teach the course material.

The course was a heavy one which required approximately 150 hours to complete. A majority of those hours (estimated by the students to be 100 hours) had been spent simply using the computer and the programme which was an older, very slow programme.

In second term the course was taught again using updated software which was much faster to use. The students indicated that the time spent on the computer by second students was in the neighbourhood of six to ten hours (or 6-10% as long). They acknowledged that the new programme effectively taught and tested the same substantive knowledge, but did so more efficiently.

These students felt that those taking the course in second term enjoyed an unfair advantage over them, in that they had more residual time to devote to their other courses. They also felt that, because the programme was so competitive and marks were important in the job market on completion of the programme, the faculty involved should make some adjustment of the marks.

This was a difficult problem. The faculty agreed that there was an apparent advantage in being in the second term section. The difficulty was in determining what, if anything, could be done to equalize the situation of the two groups of students, without over compensating. The Ombudsman discussed the issue with the Associate Dean of the faculty involved.

It was agreed that there was no means of adjusting the marks of either the first or second term groups that would ensure a more fair result than the status quo. There was no way to determine whether first term students would have used any additional time to academic advantage had it been available to them or whether second term students would have spent less time on other courses had they been required to use the slower programme.

The Associate Dean on his own initiative monitored the marks from both sections of the course. He determined that the results of the first term group were, on average, superior to those of the second term group and concluded that there was no need to adjust for the change.

This case points out the fact that there is not always an appropriate remedy to a given "injury". It also shows that it is sometimes impossible to be perfectly fair. Had the faculty decided to delay the introduction of the more effective computer programme until the following September, it would have been doing equity as between these two groups. It would also, however, have been consciously deciding to perform its educational function in a manner that was less effective than it was capable of. Is such a decision a responsible one?

The University should be sensitive to issues of equity and assess the advantages of such changes against the disadvantages in terms of the integrity of marks and equity. In this instance I concluded such an assessment had been made and a reasonable decision arrived at.

Inquiry #89-04/25 (8)

A student presented two concerns. She had obtained permission to hand in her term paper late. On the date it was due, the student alleged she had to be off campus and therefore arranged to have a friend drop it off in the instructor's departmental mailbox. The friend said she did.

The instructor indicated he had his secretary check his box on the due date and the paper was not there. He confronted the student shortly before the final examination and indicated he would not accept the paper. The student was upset and wrote the final exam in one hour instead of the three assigned. She felt that she would have done much better had she not been so upset.

The student was advised of the Student Appeal Procedures and was urged to approach the instructor as part of the "informal inquiry" process.

The instructor contacted the Ombudsman. He had been made aware that the student had consulted the office and wanted to discuss his reasons for choosing not to accept the paper. It became apparent that the instructor had taken some pains to insure that all papers submitted by the late due date were forwarded to him. He felt that the complainant had not accepted her responsibility in this respect.

It was also apparent that the instructor had not fully considered the impact that his refusal to accept the paper would have on the student immediately before the final exam. He had noticed her leave early, but noted that she had done quite well on the exam. He allowed that she might have done better had she not been upset.

It was agreed that it was not inappropriate to levy some penalty against the student for failing to have the paper in on time. It was also agreed that some accommodation was appropriate with respect to the hastily written examination paper. It was further agreed that it was difficult to precisely quantify the appropriate penalty and accommodation in each case. Ultimately the instructor agreed to accept the submitted paper and to have it marked by an impartial third party. The student agreed in turn not to pursue an appeal of the final examination grade but rather to accept it as a penalty for not insuring her paper’s timely submission.

This case highlights the need for students to either hand completed assignments directly to the instructor, or place them in supervised drop boxes in departmental offices. Consideration should be given to establishing a system of written receipts or sign-in sheets at all departments such that verification can occur.

Inquiry #89-04/26 (9)

The student attended with a concern surrounding a thesis project at the undergraduate level. Apparently this individual had begun his project under the direction of a supervisor who had left the University unexpectedly at Christmas. He had spent a sizable sum of his

own money to purchase computer software to facilitate his work and because of this and the time he had taken toward the project was reluctant to change projects.

The student had tried unsuccessfully to interest other instructors in supervising him. Unfortunately, the work he was doing did not compliment that of other instructors in his department and they suggested he change topics.

The student approached his Department Chair about the problem. The Chair was not especially interested in the student's research and treated the matter perfunctorily. The student felt that he did not take the time to understand what the student's needs were but rather picked up the phone and "called around" until he found an instructor prepared to take on the supervision of the student. He did not explain to the instructor the nature of the project.

At the instructor's office, the student discussed his project and the possibility of changing the topic to make it simpler for the instructor, who was not familiar with the computer language being used, to understand and evaluate. It was agreed that adjustments would be made and an interview was arranged to go over it.

What followed, is not completely clear. According to the student, the instructor missed three consecutive appointments, without calling to cancel or arrange a different time to meet. The instructor indicated that he could only recall two such occasions.

The student became discouraged and anxious and not a little despondent about his prospects in this most independent of independent study courses. When he finally approached the instructor, within one week of his formal presentation, to go over the project, he was advised that the professor was "all booked up" that week. In desperation, he wrote the instructor a note and the instructor finally agreed to a meeting. The meeting took place as scheduled, and with the instructor's approval, the student presented his project the next week.

At his initial consultation, the student was primarily concerned that he might do poorly on his course as a result of the lack of supervision. He also noted that the instructor did not take his concerns seriously and just smiled at him when he discussed them with him. Furthermore, the instructor was inattentive during the student's presentation.

I urged the student to consult his Dean of Studies concerning the problem. A meeting was arranged between the Dean, the instructor and the student to discuss some of the student's concerns. The instructor apologized for missing a number of meetings and gave the student some assurance that his project was being evaluated carefully and that everything appeared to be coming along well.

I next saw the student at the end of term. Although he had done well on the course in question, he was still visibly upset. He felt that he had learned little from his independent study course and felt that the treatment he had received, both from the department and from his second supervisor, had contributed to a very dissatisfying and confusing term for

him. He felt that his performance in other courses had suffered as a result of his frustration and disappointment.

We discussed the situation and agreed that it would be difficult, if not impossible, to quantify the effect of the situation on his other marks. His primary concern was to have the case brought to the attention of someone in authority and to prevent a recurrence.

I agreed to contact the Dean of Studies and relate his concerns about the way his transfer was handled and to encourage the faculty to look into the matter. I spoke by telephone to the Dean and explained that, because of the student's concern that his marks might be affected, I had not approached either the instructor or the department Chair concerning the situation. I did explain the concerns that the student had and requested that the Dean look into the matter of how the supervisor had been assigned.

The Dean indicated that he had had the benefit of speaking to both the student and the instructor and that he analyzed the problem to be between the instructor and the student. He had not spoken to the Department Chair because he did not feel that it was appropriate or necessary to do so. He felt that the Chair had satisfactorily discharged his obligations toward the student and was not prepared to raise the issue with him because he felt it would call into question the Chair's competence and he was not prepared to do that.

The Dean was clearly of the view that this was an exceptional situation, and he explained how unusual it was for a supervisor to leave unexpectedly in mid-year. He did not believe that there was any likelihood of recurrence.

I was disappointed that the faculty in question took this position. I believe that the University has an obligation to its students to ensure that once they have embarked on a course of study with departmental and faculty approval they will be provided with the resources to complete those studies. These resources include physical materials and environment and proper instruction and supervision.

This situation was no doubt a difficult one, both for the student and the department involved. When an instructor with a unique specialty leaves, he or she may take the opportunity to study that facet of discipline with him or her. When the departure is unexpected, it can leave both the student and the school in an awkward position. I may be that it was impossible for the department in question to adequately meet this student's needs in the absence of his supervisor. If that was the case, I believe it is incumbent on the department to advise the student of this fact and to work with him or her to find a new topic and to minimize the disruption to the student's programme. I do not feel that, on the information available to me, the department in question took these steps. Of greater concern is the faculty's failure to acknowledge its responsibilities and to take steps to ensure more care its taken in the future.

If the University intends to look to its alumni as a source of goodwill and financial support in the future, it must take more seriously its obligations to ensure that students receive an educational experience that is worthwhile and meaningful to them. This

particular individual left McMaster with good grades but a strong feeling that the University was indifferent to his academic aspirations and personal needs. I for one am sorry that my efforts failed to change that impression.

CONFLICTS OVER TESTING

Inquiry #89-03/08 (10)

Several students engaged in the same programme approached the Ombudsman about a complaint pertaining to "clumping" of mid term examinations. A number of these students had been required to write three mid term tests varying in weight between 20 and 40 percent of the final grade in each of their respective courses within a period of twenty one hours.

These students had already written the exams in question after speaking with the academic assistant to the Dean of Studies and being advised that there was no academic regulation which applied to require the exams to be more generously spaced. The faculty office had looked into the matter and determined that a relatively small number of students in proportion to the whole class were so adversely affected and had decided that no special arrangements were called for.

The students were inquiring into the possible existence of such a regulation and were also concerned that they were required to write a number of these exams on a Saturday, outside of class time. They wanted to know if they were entitled to "lieu time" to be taken from assigned lecture hours or any other compensation.

An investigation revealed that there does not exist, at the University level, any academic regulation pertaining to the "clumping" of mid-term exams. Faculties and departments are to be approached on an individual basis with requests for discretionary relief in circumstances of this kind.

The practice of writing mid-term exams on Saturdays had arisen out of space limitations in the particular faculty. I indicated to the inquirers that I felt it was not unreasonable to schedule exams for Saturdays in these circumstances and likened the practice to lab work and essay preparation which often requires students in other faculties and disciplines to work on weekends.

Because the students in this case had already written the tests, and because it would be impossible to fairly compensate them for the clumping which had occurred, no recommendation was made in this case. This is not to suggest, however, that the practice of dealing with mid-term clumping on an ad hoc basis is satisfactory. It is not reasonable to expect students to prepare properly or to perform satisfactorily in circumstances such as those described. The evaluations obtained are not likely to reflect the abilities of those students, and the fact that only a small number of students are so affected only serves to

exacerbate the prejudice suffered by those so affected. Both this case and the case below demonstrate the need for some consistency in the University's approach to this problem.

Inquiry #89-03/18 (11)

A student approached the office about arrangements which were made by an individual instructor for students whom, he had determined, had a "conflict" with the course mid-term exam. Those students had been given the opportunity to write their mid term almost one week later than the rest of the class. The student felt that this provided an unfair advantage to those determined to be in a conflict situation.

The inquirer contacted her instructor about her concerns and the instructor decided to provide all **students** with the option of writing a question on the final exam which would be graded in the place of the mid-term in question. The student felt that this was not an equitable accommodation because she had done well on the mid-term and would be taking a considerable risk in choosing to exercise her option to rewrite the question whereas students with poorer marks would have no such disincentive.

Clearly this situation appeared to be one of "damned if you do and damned if you don't". While acknowledging the student's concerns and the fact that the solution proposed was not perfectly fair, I noted that in this instance the instructor had made a bona fide effort to weigh the interests of the inquirer and those of her classmates.

Based on the student's indication that the instructor in question had examined each "conflict" situation individually and had required documentation to prove each conflict, I concluded that the decision maker had used a fair procedure in coming to the decision and that it was reasonable accommodation in all of the circumstances I affirmed the decision, while advising the student of my reasons for doing so and indicating the availability of the Student Appeal Procedures. The student chose not to appeal her mark.

The University has promulgated a policy to deal with the problem of "clumping" which pertains to Registrar's exams. This comprises both the ban against term tests during the week before exams and the Associate Deans' regulations against "conflicts". I recommend that Undergraduate Council prepare such a policy with respect to mid-term exams. The current practise, although administratively simple, is inconsistent and requires students to take the initiative with their instructors and faculties. In many cases students do not know until very close to the test date whether any accommodation is to be made. When steps are taken to accommodate the group that has brought the matter forward, other groups appear who have interests which differ from those of the initiating individuals. To further complicate matters, instructors do, on occasion, make accommodations which are later disallowed at the faulty level, often with consequences for those students who have relied on the instructor's decision.

A University-wide policy would answer the concerns of those students in both cases cited above. It would also answer the concerns of instructors and faculties who have little guidance or precedent to determine just "how far to go".

Inquiry #89-03/05 (12)

On this occasion, a student was referred to my office by his course instructor. The inquirer had written his Christmas exam and in doing so had used the examination booklet provided by the Registrar's Office. There had been instructions printed on the exam requiring students to answer the questions on the examination paper itself. All parties agreed that no verbal announcement to this effect had been made at the site of the exam, although the instructor recalled having advised of this requirement in one class.

The student alleged that he had handed the booklet in with his examination, in the envelope provided. The instructor advised that no booklet could be found when the examination was marked and the student had therefore received a failing grade.

Information from both student witnesses and from the invigilators suggested that there had been some confusion among the invigilators as to what ought to be done with examination booklets tendered. Apparently, some invigilators were discarding the booklets, while others were giving students the opportunity to transcribe what they could onto their papers before the end of the exam period.

At some point some of the students objected to the invigilators discarding the booklets and the instructor was called. He instructed the invigilators to enclose booklets in the envelopes. There was some question as to whether this instruction was inconsistent with earlier instructions to them.

After investigating the matter, I recommended to the instructor that he provide an opportunity for the inquirer to rewrite the exam as a deferred exam. I further recommended that other students who may have been caught in the same predicament be advised of the availability of the deferred examination to ensure equity and to protect the integrity of the grading scheme as much as possible.

The instructor agreed with both recommendations and the student was satisfied. This case points out the benefit of identifying problems early and dealing with them in a straightforward, pragmatic way. It also points out the significant prejudice that can result when material which may or may not be suitable for evaluation is destroyed. It is always preferable to preserve the information such that a decision can be reconsidered or reviewed later and effect given to the new decision, if there is one.

Inquiry #89-04/01 (13)

A student came to complain that he had four examinations scheduled within a span of some 19 hours. He was aware of the academic regulation pertaining to "conflicts" but had

been advised that, because one of the exams had been irregularly scheduled outside of the Registrar's Office the regulation did not apply.

I was able to contact the Examinations and Scheduling division and the matter was quickly rectified.

Inquiry #89-01/01 (14)

A number of the individuals attended the office complaining that their marks had been disallowed on an exam they wrote at Christmas. Apparently the instructor had set an exam which had previously been used.

The difficulty arose because the instructor had indicated that the exam was to be open book and that students could bring whatever they wished in with them. A number of students had brought a copy of the previously set exam along with the model answers and had copied the answers from one paper on to the other.

The faculty had written to the students, declaring the exam invalid and rescheduling it for two weeks into the new term. The individuals felt that it was unfair that they should be required to prepare a second time for the exam when the error had not been of their making.

Although I expressed sympathy for their situation, I indicated that to permit the exam results to stand would be patently unfair and dishonest. I suggested that the students approach their faculty to negotiate the date for holding the exam if it was in any way prejudicial to them.

I also suggested that the faculty might be prepared to consider weighing the other elements of the course evaluation more heavily so as to abrogate the need for a deferred examination. The individuals chose not to approach their faculty. I concluded, on the basis of information provided by the inquirers, that the faculty had arrived at a reasonable decision after taking the interests of all concerned into account and closed the file.

ACADEMIC ETHICS

A small, but significant, number of the individuals who attend the Ombudsman's Office come having been charged with academic dishonesty. A significantly larger number contact the office because allegations of academic dishonesty have been voiced against them by instructors. Of these, a minority are actually charged with academic dishonesty.

Individuals who are alleged to have committed a serious breach of academic ethics stand to lose a great deal and, as a result, take the charges very seriously and seek help quite early. They may feel very much in jeopardy and their reactions run the gamut from fear to anger to outrage.

A charge of academic dishonesty, unlike many other unfavourable decisions, calls into question a person's integrity and may put at risk an individual's academic and professional career. For this reason, persons who come to the office come seeking pragmatic advice that will protect their best interests as they see them. Because of the severity of the sanctions, and because individuals have little control over the process, I tend to counsel a more conservative, positional approach than I would in situations where less is at stake and the possibilities for compromise are greater.

The following cases outline some of the problems with the way in which the current policies on academic dishonesty are sometimes being administered.

Inquiry #89-03/20 (15)

An inquiry came by telephone from a teaching assistant who had come across a "clear case of cheating". She wanted to know what the possible sanctions were that could be applied to the student, whether a record of a single breach would go to the Associate Dean's faculty file, and finally whether she had the authority to deal with the matter herself without involving the instructor.

I referred the individual to the Senate Resolutions on Academic Dishonesty and to the Statement on Academic Ethics. I advised that my reading of the above documents suggested that although the responsibility to **detect** breaches of academic ethics lay with the marker, the authority to decide whether or not to **prosecute**, and what the appropriate sanction might be, rested with the instructor. In this respect I referred the individual to the department Chair.

The Ombudsman is strongly of the view that matters of academic dishonesty should be treated formally and in accordance with the procedures set out by Senate. I appreciate the concern that this individual demonstrated toward the student and, as importantly, toward her responsibilities to the University. I feel that it is important that the University provide a facility for faculty, staff and students to inquire as to procedures in a non judgmental setting and on a confidential basis. The following cases, I believe, show some of the dangers inherent in trying to deal with these issues informally.

Inquiry #89-03/26 (16)

The student inquirer attended with a concern relating to her grades. She had received back her first essay on which were some remarks about the contents appearing to have been plagiarized. Her grade was a bare pass, and although she was concerned about the implied accusation, she felt that the essay did not represent her best effort and was not prepared to make an issue of the remarks. She did, however, speak to a departmental counselor who assured her that the worst mark of term was usually dropped when calculating the average for the course and that the "cheating" issue was therefore not so significant that it should be pursued.

Her next paper was marked a full grade higher, but was still a disappointment. The instructor's comments seemed to the student "pedantic" and "unclear". She made an appointment to see the instructor and to ask what prevented it from being a "B" paper. She was told to tighten up her style and, parenthetically, that the instructor's personal opinion would impact upon the marking scheme. This individual left fearing that the instructor's suspicions concerning her honesty were affecting her results in the course.

She went to speak to the department Chair. He advised that if she felt her marks were unfair she could appeal the whole mark in the course on the basis of bias. He also remarked that she was not the first student to approach the department with this kind of a complaint in relation to the instructor. This instructor did not understand that she was obliged to either charge the student, or give full marks for the work on the assumption that the work was that student's own.

Because none of the assignments received a failing grade, presumably the instructor did not feel that there was sufficient evidence of academic dishonesty to make out a case. Assuming also that the instructor did not "punish" the student by awarding lower grades than might otherwise be the case, it still left the individual feeling that she had not received a fair and unbiased assessment of her work, something to which she was entitled.

Ultimately this inquirer decided to await the outcome of her final mark in April. Upon receiving that mark, she decided that her grade had not been significantly affected by any taint of academic dishonesty and chose not to appeal. She did feel very disturbed by the unresolved and, to her mind, unsubstantiated allegations made against her.

This case in included, not because it highlights in any way the role of the Ombudsman in these matters, but rather because it is representative of an uncomfortably large number of inquiries by individuals who feel that their honesty has been impugned without practical recourse.

Some of these individuals have been given the option of writing tests or assignments over again on the understanding that they will be marked "harder" or "accordingly". These persons feel they are innocent of any wrongdoing, but feel they are caught between a rock and a hard place. On the one hand they do not feel it is appropriate that they be singled out for special attention, yet on the other hand feel that the down side risk of being found guilty of what is, in any scholarly community, a capital offense, is too great to run. The following case demonstrates that the perceived risk is real.

Inquiry #89-05/07 (17)

The complainant had assisted a friend in the preparation of a professional presentation (not for course credit). The complainant had done a great deal of the research herself (without acknowledgement) and, in preparing a term paper for credit had used large portions of the presentation notes of her friend. She submitted her paper without referencing or noting the presentation.

The student was contacted by her instructor and advised that he had become aware of the earlier presentation and wished to review the earlier work to determine what proportion, if any, was the complainant's. The student provided her instructor with the original paper and several rough drafts. She also provided a list of the materials she had researched for the original paper and those further materials she had used in the refocusing of the paper for the purposes of submitting it in the course (a related but distinct discipline).

The student was advised by her instructor that he had caucused with two other instructors (including a departmental Chair) and they had agreed to assess the paper based on the introduction and conclusion (both of which were unique to the term paper) and to leave aside (ie. assess at zero) those portions of the paper which the student claimed were the joint work of she and her friend. On this basis the student was awarded a C overall on the course and an F on the paper. The three departmental colleagues all agreed that no academic deceit was intended and that it would be inappropriate to take steps in that respect.

The student offered to rewrite the paper (she was an A student) but her request was denied. The student inquired into an appeal. The instructor suggested the appeal be brought to another member of the department (one of the other two instructors with whom he had caucused earlier). That person demurred, and suggested the department Chair hear the appeal. At this stage no mark had been entered because of the student's inquiries concerning an appeal.

The department Chair, on hearing that the student was considering an appeal, apparently contacted either the Faculty Hearings Committee or the Senate Committee on Academic Dishonesty for a consultation on whether what the student had done constituted academic dishonesty. The Chair indicated, when approached by the student about a possible appeal, that it might be necessary to refer the matter on for adjudication on the issue of academic dishonesty.

The student was quite surprised in view of the fact that the Chair had been previously consulted and had been satisfied that no deceit was intended. The Chair requested of the student a letter explaining why she should not be charged with academic dishonesty. It was at this time that the student consulted the Ombudsman.

I advised the student not to prepare such a letter, in view of the fact that the department chair would not guarantee how or where it would be used. Indeed the Chair intimated to the student that the situation might be out of the department's hands. The student at this point was quite concerned about the situation and indicated that she was anxious not to become involved in a protracted process to determine her guilt or innocence. Her priority was to avoid such a confrontation.

I encouraged the student to meet with both her instructor and the others in the department who had been involved in the discussions to this point. She explained the procedural irregularities that had been taking place, both in terms of the procedure for dealing with

academic dishonesty and grade appeals. She indicated that she was prepared to discontinue her appeal on the understanding that the grade for the course would stand. Ultimately the matter was resolved on this basis.

This case points up the difficulties students and faculty are having in interpreting the Senate Resolutions on Academic Dishonesty and the Statement on Academic Ethics. What had occurred appears to have been an unintentional breach of academic ethics, or more specifically, "a disregard for the norms of scholarly integrity".

Had the instructor identified the problem as such and applied a penalty equal to disqualifying that portion of the work that was attributable to the unacknowledged presentation, both the instructor and the student would have known where they stood. Had the student wished, she could have chosen to appeal to her faculty's hearing committee to review either the finding or the sanction, and a hearing would have been held.

As it stood, the case involved the use of a threat of prosecution for academic dishonesty in order to obtain compliance with an academic penalty which may or may not have been warranted in the circumstances. From a substantive point of view, I was of the opinion that the penalty extracted was not excessive. From a process point of view, however, the case was a nightmare.

Neither of the Senate guidelines was followed in relation to academic dishonesty (the case was never formally brought to the attention of the appropriate faculty) and the Student Appeal Procedures were not followed with respect to the student's grade appeal. Furthermore, because of the confidentiality requirements of the Ombudsman's Office, none of these deficiencies were ever brought to the department's attention.

It is the University's intention to review the policies and procedures currently in place to address academic dishonesty. I would recommend that this process be undertaken at once and that the Senate address several of the ambiguities that have become apparent through their use.

Inquiry #89-02/14 (18)

A number of students from one section of a required course in a professional programme approached the office with a concern about mark equity. They had been students in the first term section of a course which used a computer programme to teach the course material.

The course was a heavy one which required approximately 150 hours to complete. A majority of those hours (estimated by the students to be 100 hours) had been spent simply using the computer and the programme which was an older, very slow programme.

In second term the course was taught again using updated software which was much faster to use. The students indicated that the time spent on the computer by second

students was in the neighborhood of six to ten hours (or 6-10% as long). They acknowledged that the new programme effectively taught and tested the same substantive knowledge, but did so more efficiently.

These students felt that those taking the course in second term enjoyed an unfair advantage over them, in that they had more residual time to devote to their other courses. They also felt that, because the programme was so competitive and marks were important in the job market on completion of the programme, the faculty involved should make some adjustment of the marks.

This was a difficult problem. The faculty agreed that there was an apparent advantage in being in the second term section. The difficulty was in determining what, if anything, could be done to equalize the situation of the two groups of students, without over compensating. The Ombudsman discussed the issue with the Associate Dean of the faculty involved.

It was agreed that there was no means of adjusting the marks of either the first or second term groups that would ensure a more fair result than the status quo. There was not way to determine whether first term students would have used any additional time to academic advantage had it been available to them or whether second term students would have spent less time on other courses had they been required to use the slower programme.

The Associate Dean on his own initiative monitored the marks from both sections of the course. He determined that the results of the first term group were, on average, superior to those of the second term group and concluded that there was no need to adjust for the change.

This case points out the fact that there is not always an appropriate remedy to a given "injury". It also shows that it is sometimes impossible to be perfectly fair. Had the faculty decided to delay the introduction of the more effective computer programme until the following September, it would have been doing equity as between these two groups. It was also, however, have been consciously deciding to perform its educational function in a manner that was less effective than it was capable of. Is such a decision a responsible one?

The University should be sensitive to issues of equity and assess the advantages of such changes against the disadvantages in terms of the integrity of marks and equity. In this instance I concluded such an assessment had been made and a reasonable decision arrived at.

Inquiry #88-11/07 (19)

A student inquirer attended having successfully appealed a finding of academic dishonesty to the responsible Senate committee. The committee found as a fact that the student had committed a breach of academic ethics but that he did not intend to do so. He was therefore not guilty of academic dishonesty (which requires intent). He had,

however, shown a serious disregard for the norms of scholarly integrity and was subject to the Senate Statement on Academics Ethics in this respect.

In assessing the appropriate penalty, the tribunal decided that awarding a grade of F on the work in question was an insufficient sanction and instructed the Registrar's Office to include a notation to the effect that the grade was "awarded because of disregard for the norms of scholarly integrity". The notation was to remain for at least two years and would be removable on petition to the Senate once the student was clear to graduate.

The Senate Statement on Academic Ethics makes no mention of any sanctions more serious than "a reduced mark or zero for a piece of work". It makes no reference to the sanctions set out in the Senate Resolutions on Academic Dishonesty except in the clause that deals specifically and only with academic dishonesty.

With respect to academic dishonesty, the Resolutions set out specific phrases which are to be appended to a student's transcript in a case of suspension, expulsion or where an F is awarded because of dishonesty. There is no specific authority in any Senate policy for the imposition of a notation in circumstances other than academic dishonesty. The inquirer's case was the first, and to date was the only instance when this sanction has been applied for this "offense".

Because there was no clear authority to make such an order and because I felt that the notation itself was misleading in that it **did not** indicate that the disregard for the norms of scholarly integrity was unintentional, I recommended to the Senate through the President and Vice-Chancellor that the case be reviewed and the notation sanction removed from the student's transcript.

The President, as Chair of Senate, reviewed my recommendations together with the written opinion of the Secretary to the Senate, which supported the decision on the basis that there was a "policy vacuum" with respect to serious breaches of academic ethics without intent to deceive and chose not to bring the matter to Senate for reconsideration.

I stand by my opinion that the decision in this case was one made without jurisdiction and have recommended to the student that he obtain legal advice in this respect.

The individual was upset that despite having satisfied the tribunal that there was no intention to deceive, his transcript would reflect poorly upon him and would tend to suggest dishonesty on his part. He was also of the view that it was inappropriate to follow the normal petitioning process to have the notation removed, which includes providing personal references and background.

Because the tribunal found that no intention to deceive was demonstrated, I felt that it was inappropriate to require that the complainant file material tending to suggest that he was now of good character and had been rehabilitated. The Secretary to the Senate agreed and indicated a willingness to stress to the Senate committee responsible for reviewing

petitions that the complainant's case was **not** one of academic dishonesty and that there was no issue of the moral culpability of the individual involved to be considered.

One of the recommendations which I made to the Senate in the above inquiry was that the Senate undertake a review of both the Statement of Academic Ethics and the Resolutions re Academic Dishonesty to better coordinate the two policies and to enunciate a general policy on the issue of unintentional serious breaches of academic ethics. This policy would then be available to all members of the University community. The President did request that the Senate Committee on Academic Dishonesty expand its current review of the Senate Resolutions re Academic Dishonesty to include the treatment of unintentional breaches of academic ethics in the Statement of Academic Ethics. That review is ongoing at the time of writing.

RESIDENCES

Getting In

Inquiry #89-06/16 (20)

The inquirer came to the office with the concern that he would be unable to obtain residence accommodation. His marks had been disappointing, and his grade in one of his stronger courses had not yet been arrived at because of a deferment of examination. As it stood, his average made him ineligible for residence accommodation and his name had been taken off the waiting list.

A brief telephone interview revealed that there were extenuating circumstances surrounding his poor grades which also pertained to his exam deferral. He was encouraged to petition Residence Services on the basis of those circumstances with letters of support and confirmation from various sources.

Residence Services granted his petition and returned his name to the waiting list pending the outcome of his deferred exam. The deferral, which presumably was given for legitimate reasons satisfactory to the student's faculty, was therefore not permitted to prejudice this individual's entitlement to consideration for residence accommodation.

Reasonable Enjoyment

Inquiry #89-04/13 (21)

A student called in some distress. She had an exam that day and was watching cockroaches crawl along the trim of her residence apartment walls even as she spoke. She related a history of insect problems and complaints that spanned many months. Both of her roommates had moved out in frustration.

Residence services had sprayed the apartment on numerous occasions at the request of the residents. The spray treatments were ineffective and the roaches got into the furniture which was owned by the students.

The inquirer was feeling "spooked" and disgusted being all alone, in the apartment. It seemed that when there was less activity the insects became more bold and came out in the daylight hours where the student was studying. It was a problem she could no longer ignore.

I encouraged her to contact Residence Services immediately about the problem and insist that they arrange alternative accommodation. With respect to her possessions, I suggested she prepare a letter outlining the problem, the steps she and her roommates had taken to correct it, and a list of damages attributable to the insect infestation. She was encouraged to contact my office immediately if there was any problem obtaining alternative accommodation. She was also encouraged to contact the office of her Dean of Studies concerning the disruption to her studies caused by the problem (the complaint was received during final examinations).

When I followed up with the inquirer, I was pleased to learn that Residence Services had made immediate arrangements to mover her to another residence and had further arranged to have all of her belongings sprayed for insects by a professional pest control service which guaranteed their work. The individual was pleased with the responsiveness of Residence Services to her needs and felt that they were fair in obtaining accommodation for her.

Both of these above cases point out an important principle. It is not whether a given service or department generates complaints or even the number of complaints that it generates that determine whether it is administering fairly. More important is how it responds to inquiries and complaints. The ability to stand back and hear the concerns of individuals affected by decisions and to reconsider decisions in light of this information in a fair way is the sign of a well administered and enlightened decision making system.

FOOD FIGHTS

Inquiry #88-11/11 (22)

The complainant felt he ought to have been credited for meal plan fees as he had not used the meal plan for some time. Apparently this student had initially understood that he would be accommodated in an apartment style residence that did not require him to purchase a meal plan.

When he attended to pick up his keys he was told that he had been assigned to one of the traditional dormitory style residences which required students to purchase the meal plan. He had lived in that residence the year before. He was not advised to pick up his meal card as he had been the year before, and stated that he assumed from this that he was

being permitted to live in a traditional style residence without being required to take the plan.

The inquirer claimed that he did not receive a residence fee invoice in October and therefore was not aware what he had been charged by way of fees for accommodation. In November, he stated he received his first invoice which indicated a sum equal to a full year in residence including meal plan. Later that month the student contacted Food Services to ask why he had been charged for the meal plan. He had not even picked up his meal card.

Food Services provided the student with his card and advised that, because the student was in a traditional residence, the meal plan was mandatory and they had no digression to waive the charge.

I consulted the Undergraduate Calendar and determined that it clearly indicated that residents of any of the traditional residence halls were **required** to take a meal plan as a condition of acceptance into that form of accommodation. I further concluded that, because this individual had lived in a traditional dormitory residence the year before, it was unlikely that he was unaware of this requirement.

I did suggest that he consider consulting with the Director of Residences concerning his unexpected relocation into his old hall given his expressed understanding that he had "drawn in" to the apartment-style residence which did not require the purchase of a meal plan. I did indicate that I could not, on the basis of the facts as related to me, recommend to Food Services that reimbursement be made to him unless he could demonstrate that he had been misled by either Food or Residence Services.

I concluded that with respect to Food Services this complaint was unfounded. The inquirer agreed to contact Residence Services concerning his residence assignment but did not respond to repeated follow up messages and his complaint in this respect was therefore treated as withdrawn and the file closed.

Inquiry #89-03/21 (23)

The inquirer was a residence student in her second year in a traditional dormitory residence. During her first year she had experienced considerable difficulties in using the meal plan, on account of medically documented allergies to several food groups. She had made her difficulties known to both Residence and Food Services that year and had filed an appeal with Residences to permit her to transfer to Bates which did not require her to partake of the meal plan.

Her appeal and complaints to Residences were based on her inability to digest the vast majority of the meals provided through the meal plan. The Residence file indicated every effort would be made to accommodate her in Bates Apartments. On this basis, the student reapplied to live in residence.

Over the summer the student was advised that she had been assigned a room in her former residence and would not be accommodated in Bates. She was also advised that she would be required to participate in the meal plan. She immediately contacted the Director of Residences to object to both the decision and the requirement that she use the meal plan once again.

The student received strong assurances that the Director of Residences had carefully reviewed her situation with Food Services and that the new Food Services organization could satisfy her dietary needs. Despite strong reservations, the student agreed to schedule a meeting with the Director of Food Services early in September.

Upon meeting with the Director of Food Services, arrangements were purportedly made to accommodate the inquirer's needs. The inquirer indicated, however, that upon presenting herself at the appropriate cafeteria over the course of the first week in September she found that no special preparations had, in fact, been made for her. Further, no single person or office was assigned responsibility for liaising with her to ensure that her requirements (which were quite rigorous) were being met. The complainant grew frustrated and disappointed at once again being in the position of having purchased a meal service which she could not use.

Interviews with several friends of the inquirer confirmed the difficulties that she had been experiencing with using the meal plan early in the school year. These persons also indicated that the inquirer's use of the plan throughout the year was minimal and limited to drinks and fruit snacks. There was no information, other than a computer printout indicating the frequency of use of the meal card, which conflicted with the information of the inquirer.

Relatively early in the school year, the inquirer was encouraged by a University employee, to approach Food Services about obtaining a refund for that portion of her residence fees applicable to the meal plan. She was preparing all of her meals herself and incurring substantial expense in so doing. The staff person, who was in a supportive role to the inquirer, agreed to take up the issue with Food Services on the student's behalf.

There followed a number of meetings between Food Services personnel and the staff person. There was some disagreement on the facts but both parties agreed that an understanding was arrived at for Food Services to refund a substantial portion of the inquirer's fees. Unfortunately, Food Services believed the agreement included a requirement that the student surrender her meal card and stop using it as at the date of the agreement. The staff member negotiating on behalf of the student and in her absence, did not recall any such requirement having been expressed. Both parties agreed that it was possible that this requirement was implicit and not made explicit. In any event my investigation clearly disclosed that this requirement was not communicated to the student who continued to use her meal card to obtain snacks and drinks.

When Food Services did not contact her, the inquirer attended on the staff person to ask about when her refund would be provided. She was urged to speak directly to Food Services. When the complainant contacted Food Services by telephone to confirm the agreement and to arrange for receipt of the refund, the Director expressed his disapproval of the way in which she had gone about resolving this problem and, in particular, her involvement of University personnel.

Although the particulars of that conversation are in some dispute, it was clear that, in substance, the Director repudiated the agreement and indicated quite forcefully his displeasure with the complainant. The complainant attended at the staff person's office, visibly upset, and making allegations of abusive behaviour against the Director of Food Services.

After trying unsuccessfully to intervene on behalf of the student, the staff member referred her on to the Ombudsman. I spoke to all of the parties to the dispute, and several members of Food Services staff as well as various other witnesses, both independent of and related to the parties. With the consent of the aggrieved individual I reviewed what documentation there was available at both Residences and Food Services and the notes which the staff member had taken contemporaneously with the events.

My report, which was in writing, contained a review and assessment of the evidence and various findings of fact. I recommended that, in view of the student's long standing difficulties with using the residence meal plan during two academic years, Food Services should refund, in its entirety, the inquirer's meal plan fee. I also recommended that Food and Residence Services jointly acknowledge in writing that the service received by this person was not satisfactory and to accept responsibility for that fact. Both of these specific recommendations were accepted and acted upon by them. The student in question was pleased both to see her concerns acknowledged, and with the financial accommodation that was extended.

There were also a number of general remedial recommendations to both Residence and Food Services. Residence Services has readily accepted those recommendations that apply to their service and have put into place systems which will better coordinate communication between their office and Food Services.

Food Services has indicated in writing their determination to improve their intake and service procedures to better serve the needs of students with special dietary requirements. They have not, however, been prepared to address those specific recommendations made in the report or to advise as to what actual steps have been taken to alleviate the many serious concerns that this particular case raises.

Before leaving this case, I do feel it is important to point out that many of the difficulties this student experienced were as a result of numerous communication gaps which existed both within the University and Food Services systems and between the inquirer and the various offices on campus which she quite properly used to try to resolve this long standing difficulty. Some of these gaps were all the more acute because the University

had only recently implemented a new Food Services plan on a contracted basis. Presumably with time the relationships between the University's various services and departments and Food Services will become more clearly defined and service to both students and others will be improved.

SECURITY CONSCIOUS

Inquiry #89-03/23 (24)

A student came to me scared. About two months prior, he had been violently sick one evening after eating dinner in the Commons. He had been taken to Emergency at the Medical Centre at nearly midnight where he was treated by a physician who indicated that the symptoms "looked like food poisoning". He was given a medical certificate excusing him from classes and exams for two days and told to rest and eat lightly.

A week or so after his illness he was contacted by a writer from the Silhouette. He was asked about his illness. During a brief interview, which took place on the student's way to classes, he provided a summary of the incident, including the information that, to the best of his knowledge, he was the only student so affected and "it looked like food poisoning". Shortly thereafter the campus paper did a story on food poisoning at the Commons, referring to this incident.

Approximately five weeks later, this student was contacted by an officer of McMaster Security, who indicated that he was investigating a complaint about the story and asked him to attend at Security offices early that morning. The student complied with this request.

He was, at this time, interviewed by two senior Security officers who indicated that Food Services was not happy about the article and that he could be sued for libel if he could not back up his comments with evidence. He provided the investigating officers with a copy of the medical certificate which he had been given excusing him from classes.

The student felt that both officers had used very intimidating interviewing techniques and had at no time suggested that his cooperation in the investigation was voluntary. He was left with the impression that unless he satisfied them with his explanation he would be charged. He was encouraged to submit a letter clarifying the situation to the Silhouette to clear up any misunderstandings.

After speaking to the Dean of Student Affairs, who had contacted the Director of Security Services, he was advised that Security had decided to drop the matter. Five minutes later the student was contacted at his home and asked to provide a letter of clarification to the investigating officer and that a meeting had been scheduled between the student, the complainant and the investigating officer.

The student indicated that he did not believe he had said anything misleading to the Silhouette reporter. He felt that the story was slightly unfair to Food Services, but felt that since he had no hand in writing or publishing it, he should not be required to become involved in any "retraction".

I contacted the Director of Security Services. He confirmed much of what the student had said about the course of the investigation but he would not disclose the source of the complaint, if any. He intimated that the investigation may have been initiated at his request. He would not be more specific.

I indicated that I did not feel that this matter involved any offense pursuant to the Criminal Code or provincial statute. The Director claimed that the applicable charge he was investigating was one of "public mischief". He agreed that Security's investigation had ruled out any criminal intent on the part of the student inquirer. He went on to say, however, that McMaster Security had a secondary function to perform with respect to the University, which was to gather information **on behalf of the University** for the propose of "getting to the bottom of things" for the benefit of a falsely "maligned" Food Services. He further indicated that the meeting which had been arranged between his investigator, the student and Food services was "purely voluntary" and was not intended to be part of a criminal investigation of the student.

I contacted the student who asked me to convey to Security Services his desire not to participate in any further meetings of this nature. I did so. I also arranged a meeting between myself and the Director of Security to discuss some of the concerns which this case raised.

The Director indicated that his concerns were based on a suspicion that the article in question was motivated by a desire to embarrass Food Services and in retaliation for certain charges which were laid against several residents of the student's hall as a result of an earlier incident. He further indicated that their investigation did involve a discussion with the appropriate Silhouette writer but that the writer would not divulge his or her sources.

I suggested that a criminal investigation was inappropriate in circumstances such as these. I suggested that if either Food Services or the University wished to consider redress against a libelous article they should do so in the usual way, using the civil courts. I urged the Director to refuse to use his offices for the purpose of conducting civil investigations without, at the very least, making it clear to those persons being interviewed that what was being conducted was, in effect, a **private** investigation and that their involvement was voluntary.

There is, I feel, a real danger that persons will be intimidated into cooperating in an investigation which it is not necessarily in their interest to cooperate in, out of fear of criminal sanction or charges being laid. Using the threat of criminal sanction to obtain cooperation or a civil remedy, is a form of extortion as defined by Section 346 of the Criminal Code of Canada and is subject to prosecution.

Although Security Services was prepared to desist in its investigation in this particular case, I was unable to obtain a commitment in principle from the department concerned that it would not get involved in similar investigations in the future. On the contrary, the Director indicated that he felt he had an obligation to act as a balance to the student press and that in the future he would continue his policy of filling vacuums "where Angels fear to tread".

McMaster Security Services is currently undergoing a systematic review of its operations and procedures. I did take the opportunity to meet with the independent consultant employed by the University to conduct this review, and he appeared more sympathetic to the concerns expressed about this particular incident. I would like to think that in implementing the recommendations of the report the University will give consideration to the serous issues which this case raises.

INQUIRIES BROUGHT BY FACULTY AND STAFF

A relatively small proportion (approximately ten percent) of the casework of the office involves inquiries initiated by either faculty or staff. Some inquiries come in the form of complaints or requests for an investigation or advice. Many inquiries are brought for the purpose of eliciting information about university policies, procedures or precedents of which the Ombudsman might be aware. All such inquiries are welcome and are treated with the same confidence as any other communication.

The following case is representative of a number of cases dealing with ambiguities arising out of employee benefits as set out in the Faculty Handbook and Handbook for Salaried Support Staff.

Inquiry #89-06/07 (25)

The inquirer contacted the Ombudsman after having tried every other avenue known to her to resolve her grievance.

She was an employee of Chedoke-McMaster Hospitals of more than ten years' standing. She had heard about a University policy concerning the availability of tuition-free status for dependants of longstanding University employees. She phoned the appropriate University office and was advised that she and her dependant were eligible for this benefit. She received and submitted the appropriate form and her dependant was granted tuition-free status. The form did not ask her to provide the name of her employer.

Toward the end of the academic year, her dependant received a letter from the University indicating that routine checks had determined that she was not entitled to the benefit of tuition-free status because the inquirer was not an employee of the University as defined by the personnel Department. The student was asked to contact the Business Office to arrange for payment of the full amount of fees for the year.

The inquirer had written to several individuals within the University, culminating with a plea to a senior administrator for relief from payment. She took the position that she and her dependant had acted in reliance on the university's commitment to waive tuition and that neither she nor her dependant were in financial position to pay the full fees. The ultimate answer which she received was that the university was not obliged to forgive a debt for benefits conferred in error, although it was prepared to recognize some obligation to the individual in this case. The University offered to provide an extension for payment to the beginning of the next academic year to provide the dependant the opportunity to save sufficient funds to meet this past obligation.

This complainant was concerned because she felt it would be impossible for her dependant to save enough money over the summer to pay tuition for both the past and current academic years. Furthermore, her own financial position was such that she could not reasonably be expected to make up the difference on such short notice.

Given the financial means of both the inquirer and her dependant, I formed the opinion that it was likely that the student would qualify for student assistance. A telephone call to Student Financial Aid confirmed this and, although there were some procedural hurdles to overcome, financial Aid offered to assist in whatever way possible to ensure the speedy processing of this student's application.

I advised the inquirer that I believed the University was within its legal rights to recover the benefit it had been prepared to confer in error, but that if it could be shown that the student had relied on misinformation provided by the University to her detriment, I would take up the matter once more with administration.

In order to determine if she had been detrimentally affected, I encouraged the student to submit an OSAP and CSL application retroactively for the past academic year. I felt that if the student were entitled to assistance, the responsible Ministry should not take the benefit of an error made at McMaster to avoid its responsibilities to the student. Fortunately, the Ministry agreed and the student was retroactively granted her OSAP and CSL entitlements for the past and current academic years.

This case points up a difficulty which has arisen on several occasions in the past two years. The appropriate University office has, on a number of occasions, provided misleading or incorrect information concerning entitlement to tuition-related benefits which it later recanted of. The resulting disruption to the financial plans of the faculty and staff persons affected can be quite serious.

I recommend that the Personnel Department undertake a careful review of the applicable provisions in both the Handbook for Salaried Support Staff and the Faculty Handbook to ensure that any of a number of ambiguities which are contained therein are clarified. I would further recommend that the forms provided for the purpose of applying for these benefits be amended to solicit all of the information needed by that department to provide an opinion concerning eligibility that the University is prepared to stand behind.

HUMAN RIGHTS CONCERNS

SEXUAL HARASSMENT

One of the areas of the Ombudsman's caseload which is among the most sensitive and difficult is the area of sexual harassment. Most consultations concerning sexual harassment require adherence to strict requirements of confidentiality. For this reason no individual case digests will be produced in this area.

Based on my dealings with the McMaster community in the year or so since my appointment as Ombudsman, I have been made aware that the University community and administration is especially interested in allegations concerning incidents of this nature. I am also aware that very few, if any, complaints of sexual harassment become formalized to the degree that use is made of the Allegation of violation of Human Rights Form and hence become known to the Senate Committee of Human rights. That is not to say, however, that a significant number of serious allegations are not made in the course of a given year.

During the 1988-89 academic year 5 individuals approached the office for advice concerning allegations of sexual harassment. Of these a majority were staff member and several students. The nature of the conduct complained of was great, ranging from unwanted attention and inappropriate "hovering" to what some might describe as sexual assault. Some complaints included repeated violations. Not included in these statistics are allegations of inappropriate sexual references in class or elsewhere designed to make persons of one or another sex feel uncomfortable which is considered by the Ontario Human Rights Commission to be a form of sexual discrimination and harassment.

In my opinion McMaster's current procedures for dealing with allegations of this nature are totally inadequate and singularly ineffectual. This observation is, I believe, reflected in the fact that when faced with the current procedure, few, if any, complainants choose to use it.

It is my understanding that since its proclamation by Senate in 1982, the Senate Statement and Procedures on Alleged Violations of Human Rights have resulted in only one formal complaint and no formal hearings. Based upon my experience at McMaster, I would have to conclude that these figures reflect more directly on the utility of this procedure to redress these wrongs than they do on the actual incidence of this activity on our campus and in the field and clinical placements where the University's work is done.

The problems with this procedure are so numerous as to be impossible to summarize in a general report of this nature. Suffice it to say that as Ombudsman I accepted an invitation from the McMaster University faculty Association Ad Hoc Committee on Sexual Harassment to attend as a consultant in drafting a report to Senate concerning sexual harassment on campus. Many of my own concerns and those of those persons who have consulted me concerning this issue are presented in that report and I commend the

committee for its hard work. I also recommend that Senate undertake an immediate review of its Human Rights statement, policy and procedure and in so doing, give consideration to that report.

RACIAL DISCRIMINATION

A small number of complaints included allegations or insinuations of improper discrimination based on race or national origin.

Many of the persons bringing such complaints were so intimidated that they even hesitated to suggest that race or origin could have anything to do with the poor treatment that they were receiving. Typically, these students described situations in which their concerns were not being taken seriously and for no apparent reason. In other instances, they were being refused discretionary consideration that others might have expected to receive as a matter of course.

Because in most instances these circumstances were not extreme and because more than one explanation could usually exist for a given decision, in no case was a student or I able to demonstrate proof of improper discrimination. That is not to say that in its own subtle and "difficult to put your finger on" way it does not exist as a fact of life for some members of our university community.

EXTERNAL AFFAIRS
(Matters outside the University)

OSAP Blues:

Inquiry #88-11/02 (26)

The student had attended another Ontario university and had defaulted on the repayment of loans while there. Since that time he had repaid both his OSAP and Canada Student Loan (CSL). He was returning to school full-time and, because of his history of previous default, required a clearance from the Ministry of Colleges and Universities and from the Canada Student Loans people.

He mailed a letter requesting clearance to both CSL and OSAP, setting out his reasons for defaulting and how he planned to meet his obligations in the future. He had received his clearance from CSL long ago but was still awaiting his clearance from OSAP. He related a tale of poor communication and misinformation from the Ministry.

Student Financial Aid had been consulted and they felt that the clearance was taking an unduly long time in coming. They had been following up with the Ministry on the student's behalf and indicated that the situation was not being helped by the fact that the

Ministry was in the midst of moving offices from Toronto to Thunder Bay. Student Financial Aid believed that further "badgering" of the Ministry by them would be counter-productive and that it might adversely affect the priority of service obtained by other McMaster applicants. Unfortunately for the student, who was self-supporting, he needed the money immediately for rent and other expenses.

Repeated contacts with the Ministry revealed that the delay was caused by the file being at one location, while those with the authority to give the clearance were at another. The file had been sent from Thunder Bay to Toronto for a decision, but no one quite knew where it had gotten.

I was able to determine that all the Ministry was waiting for was a copy of the student's letter to reach their Toronto office. I was able to obtain a commitment from them that, on receipt of this information, along with confirmation of Canada Student Loan clearance, they would make a decision and communicate it immediately to Student Financial Aid to permit them to disburse funds. A copy of the letter requesting OSAP clearance and the CSL clearance was faxed that day and the student had his funds the same day.

Landlord and Tenant Disputes

A large number of my monthly consultations with student involve questions of landlord and tenant law. I routinely refer most of these on to either the Off Campus Housing Office or to the Ontario Legal Aid Duty Counsel depending on whether they involve the provision of legal advice or not.

A significant proportion of these consultations, however, involve "intra-student disputes": i.e. a dispute between two or more students, all of whom might be tenants, one or more of whom might be landlords or subtenants of other students. Some of these disputes become very heated and, on occasion, violent.

In most of the above cases, none of the parties can afford the time or expense of litigation. Even if Legal Aid certificates are available, from a practical point of view it is seldom seen by students to be worth the time or trouble to complete the application process.

I feel that the University, in conjunction with the several student associations, should consider making trained mediators available to disputants in these situations. This system has been tried and is now in operation at the University of Waterloo and elsewhere. If peer mediation proves to be successful, the Off-Campus Housing Office might wish to make this service available to landlords generally as an alternative to costly litigation. A carefully administered programme, using properly trained mediators could have the affect of improving University/community relations as well as increasing the availability of student housing near the University.

I am aware that the McMaster Students Union is proposing a similar kind of service in the form of the "Hamilton Student Housing Outreach Proposal". I hope that this proposal will receive careful consideration.

XI. OTHER (NON CASELOAD) ACTIVITIES:

During the 1988/89 academic year I have been involved in numerous activities aside from the day to day interviewing and investigations which make up the bulk of my work. Many of these activities involve other contributions to the University community and each adds to both my enjoyment of my work here at McMaster as well as enhancing the profile of the Ombudsman's Office.

During the academic year past, I was pleased to have the opportunity to attend at each of the major conferences of campus ombudspersons held in North America. In November of 1988, I attended the conference of the California Caucus at Asilomar, California and in April and June of 1989, I was present at the annual conference of the University and College Ombudsmen's Association in Amherst, Mass. And the Association of Canadian College and University Ombudspersons in Toronto respectively. I felt that these conferences were particularly valuable to me in view of the fact that I was new to the profession. I learned a great deal from the experiences of my colleagues at other schools and feel that the service provided to the McMaster community has improved as a result.

In May of 1989, I also had the opportunity to receive training in the mediation model for conflict resolution as provided by the Canadian Dispute Resolution Corporation out of Toronto. I feel that the skills and information that I received at this course have been invaluable to me in expanding the ambit of services which I can provide to the students, staff and faculty at McMaster.

During the course of the year I have also engaged in numerous promotional activities. I prepared several articles which were published in both the Silhouette and Courier newspapers and gave talks at several student functions including leadership seminars and meetings. Promotional literature in the form of brochures were composed, published and distributed during Orientation and through key referral sources.

During the summer of 1989, I arranged for meetings with key referral sources and met with each Faculty's Dean and Associate Dean (Studies), both to introduce myself and my office and to discuss any areas of mutual concern that had arisen during the course of the academic year. I found the faculties to be, without exception, keenly interested in areas of academic concern and open to discussing possible means of improving the experience of students at McMaster.

I intend to try to make these meetings an annual practice. It was worthwhile to meet with each of them in a relaxed environment where there did not exist a given "problem" around and through which communication was directed. I hope that the faulty and staff at the various faculty offices also found our meetings to be useful and worthwhile.

RECOMMENDATIONS

1. That each faculty exercise discretion to waive the requirement to write the McMaster Test of Writing Competence in appropriate circumstances.
2. That McMaster Security maintain a clear distinction between when it is exercising its functions as a policing force and when it is acting in the capacity of a private investigation service for the University or its associated organs and that it advise persons being investigated in which capacity it is acting.
3. That departments establish a system of written receipts or "sign in" sheets to provide for verification of when essays and take home exams are handed in by students. That the Personnel Department revise the application form currently used by a staff or faculty member to request tuition-free status for themselves or dependants.
4. That the University and/or student associations on campus consider establishing a peer or other mediation service on campus to deal with inter-student disputes or conflicts.
5. That the McMaster Students Union consider establishing a service to provide peer or other advocacy on behalf of students involved in the University's adjudicative process.
6. That Food Services put into place an appropriate intake procedure for students with special dietary needs, which system should include follow-up procedures to monitor the qualitative provision of service to these students.
7. That Senate Secretariat continue to encourage early exchange and disclosure of information and/or documents between parties to a student appeal under the Student Appeal Procedures.
8. That Senate review the Senate Statement and Procedures on Alleged Violations of Human Rights and in so doing give consideration to the Report on Sexual Harassment prepared by the McMaster University Status of Women Subcommittee on Sexual Harassment.

McMaster University, 1989-90 Annual Report
Richard A. Russell

ACADEMIC CONCERNS

ADMISSIONS

Inquiry 89-10/36 (1)

The inquiry originated with several candidates for admission to the University's M.D. Programme. These students were concerned that the admission criteria for the programme gave preferred status to applicants who held Canadian citizenship. They

were concerned that this policy was in conflict with the Senate Statement on Human Rights.

I reviewed with them the "Admission Policy for the Medical Programme" including the "Geographical Consideration" aspect of that policy, as outlined in the Undergraduate Calendar. This information did confirm that in order to attain tier one or tier two priority status, one would be required (along with certain local residency requirements) to be either a Canadian citizen or permanent resident of Canada on or before a certain date.

The inquirers referred me to the digest of the Senate Statement on Human Rights, found in the Undergraduate Calendar which reads:

> McMaster University wishes to ensure the full and fair implementation of the principles of the Ontario Human Rights Code which states:
>
> Every person has the right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

The students informed me that, because of the competition for medical school, it was virtually impossible to be able to get an interview unless one was priority one or two candidate. They indicated that it was their information that no visa students had been accepted into McMaster's medical programme for the last seven years.

I advised both inquiries that the Senate Statement on Human Rights effectively incorporated the entire Ontario Human Rights Code into Senate Policy and that the Code itself did contain numerous saving provisions that narrowed the application of declaratory first section considerably. I suggested that we meet in one week's time after I had had an opportunity to review the Code and any applicable caselaw.

On review of the Ontario Human Rights Code, I was able to determine that subsection 15(2) applied:

> 15 (2) A right under Part I to non discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence.

Based on this subsection and the cases decided under it by the Ontario Human Rights Commission, I concluded that the Geographical Consideration provisions of the Medical Programme Application Procedures were not contrary to either the Ontario Human Rights Code or the Senate Statement on Human Rights.

I met with the inquirers to review the applicable provisions of the Code and explained to them the relationship between the Code and the Senate Statement. I also explained to each of them my understanding of the reasons for the saving provisions outlined in section fifteen.

Both inquirers were satisfied that there were legitimate reasons for differential treatment in the provision of educational opportunities and indicated that they would have been surprised had it been otherwise. They were pleased to have been able to come to some determination on the matter without the need to formally challenge the Programme's admissions procedures.

Inquiry 90-03/11 (2)

The statement inquirer was a candidate for the medical programme who had just been advised that her geographical status had been revised based on the data provided in her Autobiographic Sketch. Upon receiving this notice, the inquirer had attended at the Admissions Office for Health Science. She understood that the change in geographical status was based on the fact that she had not been a Canadian citizen or permanent resident of Canada for at least three years prior to November 1, 1989 (the final date for receipt of applications). The inquirer had become a permanent resident of Canada prior to November 1, 1989, but subsequent to November 1, 1986.

An examination of the Application Procedures established that, although three years area residency were required in order to establish Hamilton Health Region or Ontario status, it was only necessary that the applicant be a permanent resident on or before November 1, 1989 in order to qualify for this status.

The student was very anxious, because it was her understanding from the Registrar's Office that the determination of which candidates were to receive interviews was to be made in only three days. She felt that unless the misunderstanding were cleared up right away she might lose her opportunity to be considered for an interview.

I contacted the Associate Registrar's Office and was able to schedule a meeting between the Associate Registrar, the Chair of the Admissions committee and myself. At that meeting it was determined that the inquirer's status had been changed, but not on the basis of the date of her permanent residency status, as the inquirer believed, but based on information she had provided concerning area residency. It was agreed that I would communicate the reason for the status change to the inquirer and she would be given ample opportunity to set the record straight and to supply evidence satisfactory to the Admissions committee concerning her area residency.

The Chair of Admissions confirmed that, although screening for officers of interviews began soon, errors or oversight brought to the attention of the Committee would be duly corrected and qualified applicants given interviews.

The inquirer ultimately was able to satisfy the committee of her Ontario status and, based on her qualifications, status and Autobiographic Sketch, was offered an interview.

Inquiry 90-01/09 (3)

This complaint was brought by an individual who felt that her application for admission into a professional programme had not been fully considered because of the nature of the material provided by her to the Admissions Committee.

This person had been diagnosed as learning disabled. She had approached the Registrar's Office concerning how she might make the Admissions Committee aware of her disability such that they might take some into consideration in accessing her academic qualifications in relation to other applicants. Her marks approached, but did not meet the published minimum academic criteria.

She was advised to prepare a letter to accompany her application and to submit whatever supporting material she wished. She was given assurances that the Admissions Office would see that these materials, and her request for special consideration, were provided to the Committee.

The inquirer was notified by letter that her request for special consideration with regard to academic eligibility for the programme in question had been denied. The letter included a description of the information that was made available to the committee, (which included the candidate's letter and an assessment she had provided). Reasons for the decision were provided, and these were essentially that, in the past all applicants had been required to meet the published minimum academic criteria. The inquirer was invited to reapply if and when her academic standing improved.

The inquirer's complaints were several. First, she felt that she had not been properly advised about the admissions process. She had understood that, in submitting her request for special consideration, the Registrar's Office and Programme Director would indicate their support of her request. This was clearly not the role or responsibility of either of these offices. Because of this misunderstanding, the inquirer said she had not submitted as complete or persuasive a letter as she was capable of.

Secondly, she noted that the assessment submitted by her was several years out of date and not reflective of her current abilities or condition. It had been prepared for a specific purpose and was not as comprehensive as she felt it would need to have been in order to satisfy the concerns of the Admissions Committee.

At the time of my first interview with the complainant, more than one month had passed since she had first received notice of the Committee's decision. I provided her with a copy of the Student Appeal Procedures and explained the provisions pertaining to Admissions decisions. These include the right to request a Registrar's review in circumstances where the student believes that the decision complained of was based on

incorrect or incomplete information. The inquirer indicated that she had not been aware of this provision and had not requested a review within the one week time period prescribed.

I urged her to contact the Registrar's Office immediately to put them on notice that she would be seeking a review, based on the more complete information available through a current assessment, and a new letter of application. With the inquirer's permission, I spoke to the Registrar to advise him of the nature of the request and to ensure that the inquirer would be able to speak with him directly regarding her situation. The Registrar agreed to give consideration to the matter, despite the time delay.

The Registrar arranged to have the inquirer's revised assessment and covering letter considered by the co-chairs of the Admissions Committee for a determination on whether to present the case to the full committee for reconsideration. Ultimately, the committee did reconsider the inquirer's application and declined to offer her an interview.

The inquirer was not satisfied with the decision and lodged a further complaint alleging that the practice of granting interviews on the basis of marks wrongfully discriminated against her as a learning disabled person.

I explained to her there was no evidence to suggest that the committee did not take into account both the current evidence of the disability as set out in the revised assessment or her own representations contained in her covering letter in arriving at their decision. That being the case, I felt that I could not support her complaint and would affirm the right of the admissions committee to exercise its academic judgement in assessing her suitability for the programme. In my view the University had met its obligation to fully consider her application in light of her particular circumstances.

This case and the one preceding highlight the University's willingness to take extraordinary steps to ensure that due consideration is given to all deserving applicants to its programmes, even where this requires special meetings and, occasionally, deadline extensions.

I would note, however, the need for assuring that accurate and current information is obtained in circumstances where a candidate is seeking special consideration pertaining to a disability. In order to be fair to all candidates for admission it is incumbent on the University to ensure that medical assessments are up to date and relevant. Because many disabilities change over time, caution should be exercised in relying on any out of date assessment. To do so might well result in prejudice to either or both of the disabled and the other candidates. Disabled candidates who offer assessments which are obviously out of date should be asked to submit a more recent assessment.

Inquiry 90-06/09 (4)

The inquiry originated from a part time student who was reapplying to study several courses over the summer. He was concerned about the nature of the information solicited on the Spring/Summer Application Form which was contained in the University's Spring/Summer Degree Courses publication.

The application in question required the applicant to disclose both their country of birth and date of entry into Canada. The inquirer wanted to know whether the University was permitted to solicit this information, or whether it was in breach of either the Canadian Charter of Rights and Freedoms or the Ontario Human Rights Code.

I reviewed the Ontario Human Rights Code and was satisfied that there was no infringement of an applicant's human rights in the mere request for information. The Code does, of course, place a number of legal limitations on how certain information is used.

I contacted the Admissions Office and was advised that the information collected by the form was to be used to determine whether a given candidate met the University's residency requirement. Any candidate for admission is required to satisfy the University as to his or her competency in the language of instruction (generally English). This requirement is satisfied by having resided in an English speaking country for at least four years. The questions concerning country of birth and date of entry into Canada are used by the Admissions Office to determine whether admission should be conditional on the successful completion of the Michigan English Language Assessment Battery (MELAB) or Test of English as a Foreign Language (TOEFL). Much of the other information requested on the form was used to permit the University to meet its reporting requirements to the Ministry of Colleges and Universities.

This information was passed on to the inquirer and he was satisfied that the information was being gathered for a legitimate purpose and that the University was within its rights in requesting it. He did not contend that the information elicited by the form was misused in his particular application.

Based upon my discussions with the Admissions Office, it became apparent that the data which was collected for different purposes, including reporting, determining English competency and academic standing, was all made available to admissions committees. It caused me some concern that information that was not strictly relevant to the admissions decision was being made routinely available to admissions committees.

Admissions agreed, for example, that once a candidate's English competency has been satisfactorily determined by the Admissions office, the national origin and date of entry into Canada of the prospective candidate for admission should no longer be a relevant consideration. Providing this information to the decision maker(s) adds to the data that has to be sorted.

I have therefore recommended to the Admissions Office that information that is forwarded to Admissions committees be screened by them for relevance. Besides reducing the amount of sorting that will need to be done by the committees themselves, such a practice should help to protect University decision makers at all levels from appeals, legal suits and human rights complaints based on allegations of racial, national and other forms of illegal discrimination by providing a means of demonstrating that such information could not have been taken into account in the admissions process.

Such a policy would also bring the admissions process more closely into line with the Senate's Implementation Guidelines for the Security of Student Data which recognizes that "data collected about students vary in nature and so should be treated differently."

I understand that the Registrar's Office has considered this matter internally and is considering changes to the admissions process in consulting with the various Associate Deans of Studies.

INSTRUCTION

Inquiries 89-11/34, 89-12/08, 90-02/13 (5)

These complaints were brought independently by a number of different students but pertained to problems with the instruction being received in a section of a course.

Each of these students felt that the quality of instruction they were receiving was significantly poorer than any they had experienced before. One of the students was a second degree student and another was an upper level student. Several felt that they had received little, if any, worthwhile instruction and inquired into how they could withdraw late, without academic or financial penalty.

Because the term was very nearly over, I advised the students who were primarily interested in a late withdrawal that it was highly unlikely that the Faculty involved would be prepared to take such an extraordinary step. At least one of the complaints indicated that the textual material was relevant and addressed the course objectives and that most, if not all, of the material covered on exams and/or tests was in the text. Several of the students had a separate complaint that one test was marked based on different criteria than those that had been explained during class.

Each of the students had, apparently, approached the instructor about their concerns and had found her to be very defensive and difficult. All were apprehensive about the risk of academic ""all out" in the event that they made their feelings known.

I encouraged them to prepare a letter expressing their concerns and to make it available to those in the class who wished to sign it. I suggested that one or more students attend as a

delegate from among the concerned group to discuss the problems they were having with the department chair, using the letter as evidence of the extent of the problem.

These informal steps were taken and the chair acknowledged that, based on the teaching evaluations he had reviewed, there was obviously a problem. The chair sat in on a number of classes and ultimately decided to replace the instructor for the term course that followed.

With respect to the mid term exams, which, it was alleged, was graded on a different criteria than had been explained in class, the department chair suggested that he could not intervene and the appropriate channel for redress was the Student Appeal Procedures. The department was not prepared to support the late withdrawal request of the students and neither was it prepared to review the marks in the course based on instructional considerations.

Using the Student Appeal Procedures (SAP) to redress errors or injustices that pertain to instructional deficiencies or to deal with other problems that extend across an entire course or section is very problematic.

First, the procedures do not address "class actions" as such, and do not expressly permit one student to launch an appeal on behalf of others. Students seeking relief in such circumstances must be prepared to successfully address the legitimate argument that to provide relief to one student only would create an inequity vis a vis all other similarly affected students in the class or section.

The Senate Board for Student Appeals (SBSA) has, in the past, granted relief that extended beyond the immediate student bringing the appeal to all persons in the class similarly affected.

Unfortunately, because the procedures do not appear to contemplate such group appeals, members of the affected group can not ensure that decisions of the SBSA are applied to all. Conversely, members of the affected group who differ in interest with appellants cannot be sure whether their interests will be canvassed in the appeals process.

Secondly, it can be extremely difficult for individual students to meet the burden of proof required to establish the existence of instructional and other problems in a classroom setting. Who, other than the Department of Faculty involved, are qualified to assess whether instruction is being provided at an "acceptable" level? Even in circumstances where an appellant is able to produce evidence from half of the class that instruction was inferior to that which they had experienced before, would an appeal body be able to conclude that instruction was unacceptable?

In my submission, appeal procedures are designed and work best to give redress to individual grievants whose complaints are unique or nearly unique to them. In circumstances where the complaint or grievance is more broad based, such as a failure to provide instruction, the appropriate response is more likely to involve an administrative

decision to treat a systemic problem than a quasi-judicial decision based on the merits of one individual's case.

I would therefore suggest that where a determination is made that there may have been either significantly substandard instruction or a general misapplication of academic criteria, the appropriate forum for a determination and/or redress be through the Faculty or Departmental committees. The Student Appeal Procedures should continue to be available to individual grievants to ensure due process.

A parallel process should be available to provide an opportunity for redress for instructors who feel that administrative decisions made during the review process were made in error or were in breach of their academic freedom.

GRADING

Inquiry 90-02/27 (6)

The inquirer was an undergraduate student in the final year of a professional programme. One of the required courses for the programme was graded based on three components, one of the smallest of which (worth 20% of the grade) was an oral presentation.

The student in question had done quite well on the first 80% of the grade. Unfortunately the date for his final presentation conflicted with travel plans he had previously made. There was some disagreement about what the inquirer had done to resolve this dilemma.

It was the student's contention that he had tried, on several occasions, to speak to the course instructor about his problem. Each time he had been unsuccessful in finding the instructor in. On the last occasion, the instructor had been ill and therefore unavailable.

On the last occasion, the student asked the Programme Secretary to calculate his grade based on his obtaining a '0' on the presentation. Her calculations indicated that he would still have passed the course. On this evidence he then asked whether he could fail the course if he failed to attend to make his oral presentation and was advised by both the Programme Secretary and Programme Assistant that he would not.

Based on this information the student missed his oral presentation. Soon afterward, he was advised in writing by the instructor that, having missed a required component of the course, he had been assigned an 'F' and would be required to retake the course.

I reviewed with the student the course outline, which indicated that each component of the course had to have been attempted in order to pass the course. The student indicated that the course outline was handed out the year before, and that he had not realized that this requirement existed at the time of his attendances at the programme office.

The student was interested in advice concerning the Student Appeal Procedures. I reviewed the procedures with him and, with his permission, contacted the instructor and Programme Assistant.

Based on my conversations each of these persons it became apparent that there were discrepancies between the evidence of the Programme Assistant, who recalled advising the student that only the instructor could authoritatively advise on whether or not attendance at the oral presentation was a requirement to pass the course, and that of the student.

The instructor felt that the situation placed him in a difficult position and was open to the idea of a meeting to try to clarify what had happened. We both agreed that the focus of the meeting should be primarily around what took place in the office at the time in question, and that the issue of how the matter might best be resolved should be deferred until after that meeting had taken place.

At the instructor's suggestion, the meeting was held at the Ombudsman's Office, and included the student, Instructor, Programme Assistant, Programme Secretary and myself. Based on the information that was exchanged at the meeting, the Instructor felt that it would be appropriate to provide the student with one further opportunity to give his oral presentation. The student accepted this accommodation as being fair and gave his presentation, which was graded, a penalty for lateness applying.

The solution arrived at was satisfying in that it addressed the Instructor's concern that the student be required to practice skills that would be needed in later professional life, while at the same time meeting the student's need to be able to complete his programme requirements in time to graduate.

Inquiries 89-10/31, 89-10/34 (7)

Both of these inquiries originated with students in the same course. Their complaints centered primarily on the administration of a mid term exam.

The course itself was heavily subscribed and it became apparent early in the term that there was insufficient seating. Apparently the Registrar's Office was contacted and a new lecture theatre assigned. On one occasion the class did convene in a larger theatre, but the instructor expressed some reservations about it and ultimately chose to resume classes in the smaller room. There was some disagreement as to whether or not a "show of hands" vote was taken.

On the day the exam in question was administered, close to the full complement of students was in attendance, with approximately 15-20 persons seated on the stairways in the aisles of the lecture hall. Exam questions were randomized to discourage cheating and were handed out to students as they entered the lecture theatre.

The complaints of the inquirers were several:

1. Some students were provided as much as ten minutes more time to complete the exam than others, which gave them an undue advantage due to the fact that the exam was rather long and difficult to complete in the time provided;

2. Some students, who claimed not to have seen the last page of the exam, were provided an additional ten minutes at a later time to complete the questions found on that page;

3. Students required to sit on the stairs were significantly disadvantaged since they were generally later arrivals and lacked a comfortable writing position;

4. Using the undersized lecture hall was a fire hazard in any event and should not have been permitted by the University.

The students in question were reluctant to speak to the instructor and felt that if they were to discuss these problems with other students it would only get back to the instructor.

Because the complaints were brought by a number of different people and involved a number of related, but separate complaints, potentially affecting a sizable portion of the class, I contacted the instructor involved.

He agreed that the lecture theatre he was using was not optimal but explained that the larger room assigned by the Registrar's Office was also less than ideal. Apparently the room is nicknamed "the pit" by faculty members because the lecturer is required to stand in a recessed area below ground level, which is bordered by a railing which interferes with eye contact. He believed that a large majority of the class preferred the original room and indicated that at most lecturers there are a number of spare seats available that students seated on the stairs chose not to use. He indicated that these seats were often pointed out by him. He agreed that if there were another, more suitable, venue available he would make use of it.

With respect to the differing times allowed for the writing of the exam, the instructor advised that there had been a lecture in the room during the hour that preceded the mid term exam. He claimed that the earliest that people were seated with exams was five minutes prior to class and that all students had their papers by the start of class.

With regard to those persons who had written the exam on the stair, he allowed that they may have been disadvantaged relative to their classmates who were seated with a proper writing surface. He acknowledged that the test was, indeed a long one, and that time may well have been a factor in performance. Very few students left the exam early, by all accounts.

The instructor had taken some care in ensuring that only those who had attempted any questions on the last page of the exam were given an opportunity to take the additional

ten minutes for that purpose. He had also asked a number of questions to try to ascertain whether they had, in fact, read the questions on that page before providing them with the additional time.

Both the instructor and I had some difficulty in determining how to remedy the situation. The instructor was prepared to consider any suggestions, but was skeptical about how to improve the situation (unfortunately there was no record of which students had been seated on the stair when the exam was written). We both agreed that administering the exam again would be difficult to arrange and would impose a further hardship on the students at a busy time of year. We also agreed that any available to all affected students equally and should be vetted through the department to ensure that it was both acceptable academically and enforceable.

After consultation with the department, the instructor suggested that the final course grade be calculated two ways, each allotting different weight to the mid term. In this way those who did significantly better on the final exam would have a greater proportion of their grade calculated on that basis. Those who did particularly well on the mid term would continue to receive the benefit of the original grade break down.

The inquirers were advised about this accommodation and were satisfied with it. They were also advised that the instructor would reconsider the venue for lectures if another site was available and were referred to the Office of the Assistant Registrar (Scheduling and Examinations) in this respect.

ACADEMIC REGULATIONS

Inquiry 89-11/18 (8)

The student called with a complaint about exam "bunching". She was scheduled to write three exams within a twenty-four hour period and wanted to know whether academic regulations permitted her to have one of the exams rescheduled for earlier in the exam period. The student had contacted her instructor in one of the courses who had agreed to have her write it at another time but had been advised by the Registrar's Office that any such arrangement would have to be cleared through the student's Faculty. The student wished to know whether her situation constituted a "conflict".

I reviewed the Undergraduate Calendar which, at page 14 deals with conflicts under the heading **"Rescheduling Examinations".** Nowhere in the Calendar is there a definition of what constitutes a "conflict". By consulting the Scheduling and Examinations Office I was able to determine that the general definition used by that office was in three parts and included circumstances where:

a) 2 exams are scheduled for the same time, or
b) 3 exams are scheduled in the same calendar day, or
c) 3 exams occur in consecutive exam periods.

This definition appears on the published exam schedule that is posted throughout the University approximately one month before exams begin. The Undergraduate Calendar does, at page 14, contain a paragraph that refers students to the examination schedule:

> Other regulations related to the conduct of, and special arrangements for, examinations appear on the examination timetable and the examination booklets.

Because the inquirer's exams fell on two different calendar days, with an examination period that intervened between the second and third exams, there was not a "conflict" as defined by the regulation. The interpretation provided by the Registrar's Office to the inquirer was the correct one and only with special permission of the Faculty was the examination, which was a Registrar's administered exam, subject to rescheduling.

I spoke to the Associate Registrar to determine whether the conflict definition could be made available to students in the Undergraduate Calendar. I was advised that as a Dean's of Studies policy, not a University policy of either Senate or Undergraduate Council, it was subject to change by each and every Faculty. Because the policy could vary between Faculties and could be changed between printings of the Calendar it was not included. In fact, one Faculty does use a more generous definition of conflict which would include circumstances where three exams were scheduled within a twenty-four hour period and this difference was the source of some confusion among students.

I would recommend that both the Undergraduate Calendar and the examination timetable include a notation to the effect that Faculties retain the right to determine what degree of examination bunching will constitute a conflict such that examinations will be rescheduled. Students should be referred to their respective Faculties for further information.

In this way students from faculties with a more generous definition of conflict than that appearing on the examination timetable will more likely become aware of the availability of rescheduling.

ACADEMIC ACCOMMODATIONS

Inquiry 90-02/19 (9)

This complaint was brought by a student with a severe physical disability. He had missed a test as a result of having to attend at the Office of an out of town medical specialist for tests pertaining to his disability. He had, at the beginning of term, filed with his Faculty Office a medical certificate that was general in nature and which indicated that he might miss classes occasionally due to recurrent and unpredictable pain which was related to his disability.

Apparently the inquirer had, before the test, tried without success to contact either his instructor or coordinator to make alternative arrangements to complete the test. Upon his return he submitted a brief medical note outlining the reasons for his absence. He was, however, unable to obtain a commitment from his instructor as to how that portion of his grade that was based on the test would be arrived at.

On receipt of his marks the student inquired into his final average and determined that he had been awarded a '0' as his mark for the test. The instructor felt that the medical note submitted was late and lacking in specificity. In the meantime, on advise of his Faculty, he had solicited and filed with the Faculty a further and more detailed medical certificate. Because it was early in the new term the information in that certificate had been delayed in getting to the instructor.

The inquirer attended the Office dismayed at the time it was taking to resolve what appeared to him by straight forward medically required absence. He felt that it was unfair that his Faculty was requiring him to do the "leg work" of both satisfying his instructor of the legitimacy of his absence and following up to ensure that his grades were changed accordingly. He was acutely aware of how his lack of mobility added to the time and energy he had to expend to make these arrangements.

I explained that it was my understanding that the University's policy was that academic accommodations related to any student's disability must be made by the student's Faculty or with their approval. I therefore encouraged him to work primarily through the Dean of Studies' Office to resolve the problem.

At the same time as the inquirer was trying to achieve a resolution through his Faculty, he was invited by the Chair of the department involved to discuss the matter. The chairman listened to the inquirer's concerns and suggested that he would be able to resolve the matters to the student's satisfaction by the time final grades were released. The inquirer indicated that he did not feel that this was satisfactory and wished to see the grade change more quickly. The department chair was not prepared to expedite matters to that extent, but, according to the complainant, agreed to reduce their understanding to writing.

When the complainant contacted the Faculty to advise them of the understanding arrived at, he was told that it was unlikely that the department could provide anything in writing. The complainant contacted the chairman one week later, and was told that he would not be receiving written acknowledgement of the mark change until June. At this point he again contacted the Ombudsman.

The inquirer was by this time very frustrated and upset. He felt that he had "been through the hoops" as it were and was no further ahead for his trouble. His experience working between the instructor, Faculty and department had eroded his confidence in the informal means at his disposal to resolve the matter; above all he did not want to start "from scratch" in June when his grades became unavailable.

I reviewed the Student Appeal Procedures with him and suggested that he request that a Formal Inquiry be commenced by the Dean. He did do so and shortly thereafter received written confirmation that the grade had been changed.

This case points out the need for Faculties to develop policy to deal with requests for academic and instructional assistance by disabled students. There exists a fair degree of confusion about who is responsible to determine whether requests for academic accommodation, (ie. extended times for writing exams, or accepting answers through a different medium (an oral exam rather than a written examination)) are granted.

While I perceived the situation as one involving an accommodation directly relating to the student's disability (and hence in the Faculty's sole domain), the Dean of Studies' Office treated it as a routine request of a student to be excused for missing a test. Because the instructor alone was responsible for establishing the grade for the course, they deferred to him as to how he would accommodate the student's request. At the same time, the department chair saw the decision as within the department's purview. The student was receiving at least three different signals about how to proceed and was becoming understandably frustrated.

The responsibility for this student's frustration was shared. Certainly part of the problem was due to a lack of communication between myself and his Dean of Studies. Even had that communication been better, however, neither of us had considered the department the department the appropriate forum to resolve the problem. What was obviously lacking was a policy to indicate who the student was required to satisfy concerning his absence. In the absence of such a policy, students run the risk of arriving at an accommodation with an instructor or department which may later be "vetoed" at the Faculty level.

The Faculty of Social Sciences has developed a set of Guidelines for the Classroom Assistance and Evaluation for Students with Physical and Learning Disabilities which contains accompanying recommendations. I believe that this is a commendable initiative and one which provides a good beginning for the University and Faculties to build upon. I would recommend that each faculty develop policy guidelines and that the University strike a committee to coordinate these guidelines as closely as possible to ensure a degree of consistency.

ACADEMIC ETHICS

Inquiry 89-05/06 (10)

This case involved an individual who, along with another student, was accused of cheating on an exam. The student denied the accusation.

The case was complicated to some extent by the fact that the other student, who was "co-accused" sought legal representation at the hearing. This resulted in a request by the prosecuting instructor to also have legal representation. As a result of scheduling difficulties involving the faculty committee members, students and solicitors involved, the hearing of the case was postponed on several occasions and finally took place approximately five months after the incident was alleged to have occurred.

Both students were registered in new courses at the beginning of a new term by the time the hearing actually began. Because the delays had been lengthy, both students were put in the difficult position of having to choose and register in their courses without knowing what their academic standing was. This placed this complaint in a difficult academic situation.

Because of budget constraints, the faculty in question was not able to afford to retain a solicitor privately. In order to expedite the hearing, the Faculty accepted the offer of faculty member who was also a lawyer to present the case on behalf of the instructor. Unfortunately, that same faculty member was an instructor of the complainant in a course that she was taking concurrently with the hearing.

Ultimately the charges against the complainant were withdrawn prior to the completion of the hearing. Once the hearing was completed, and with the complainant's consent, I approached the Faculty involved with some concerns about the above procedure. First I was concerned about the apprehension of bias that the appointment of an academic colleague as counsel to one party to the hearing created.

Both this complainant and the co-accused, as well as counsel for the co-accused, felt that the hearing tribunal behaved in a deferential way toward counsel for the instructor, whom they referred to as "Professor X" throughout the hearing. All felt concerned that the tribunal was being influenced by the ongoing professional relationship with their colleague and were not confident that they could receive an unbiased hearing.

Even after the hearing had been concluded, the complainant was concerned about opinion held of her by the instructor who had prosecuted the case against her. By working with the Dean of Studies I was able to ensure that her grades would be monitored and that, if the student felt it necessary, an informal reread process would be made available to her to ensure that her academic work was graded fairly. As it turned out the inquirer was well satisfied with the evaluations she received in the course and felt that the instructor had been scrupulously fair with her throughout.

The faculty agreed that in the future a better procedure would be to use the faculty member's legal training by putting it at the disposal of the hearing tribunal as a member of that tribunal, rather than as a representative of any party to the dispute.

It was also agreed that it would be beneficial if the University's academic ethics policies specifically authorized faculties to consider academic accommodations to students in circumstances where, as here, the passage of time to bring a matter to hearing may cause

academic prejudice to the student involved in the process. I would recommend that the Senate Committee on Academic Dishonesty, which is currently developing recommendations to Senate concerning both the Senate Resolutions on Academic Dishonesty and the Statement on Academic Ethics, take these matters into consideration in preparing their recommendations.

General Comments

Every year a good number of students attend at the Ombudsman's Office with charges of academic dishonesty pending against them. While most students whom I see believe they have been wrongly accused and come seeking information about those procedures available to seek redress, others are of the view that they caused or contributed to the situation by either deliberately behaving dishonesty or by being reckless in that respect. Among this latter group are a number who might well be able to successfully answer these charges if properly defended.

Many, indeed most of these persons, are not especially interested in contesting the evidence against them, and are prepared to assume responsibility for their actions; they come primarily to get some idea of the likely range of sanction that they might face were they to "plead guilty" to the offense.

Unfortunately the current policies on academic ethics do not provide a good forum for discussion of potential sanctions. For first time and less serious infractions involving in course exams and papers, students can negotiate with their instructor as to penalty. For persons who have previously committed a breach of academic ethics or whose alleged offense is of a more serious nature or occurred during a Registrar's administered exam, the matter must be dealt with by the faculty's Hearing Committee.

This procedure is not especially well liked by instructors, who often voice dissatisfaction with the formality and "legalism" of the process. It also does not provide the accused person any opportunity to "sound out" the decision making body about possible penalties before deciding how to proceed. In some faculties, the student will have the opportunity to confer with the Associate Dean (Studies), but in others the Associate Dean may sit on the Hearings Committee and therefore can take little or no part in counseling students. In many cases the best a student can do is determine who will be responsible for prosecuting the offense and approach them about agreeing on a "joint submission" concerning the appropriate sanction.

Many times this avenue is not viewed as a practical one by the student who sees such a meeting as being potentially very confrontational. Rather than put themselves in such an uncomfortable and disadvantaged position, many opt to retain legal counsel or to "take their chances" before the Hearings Committee. Either way the result will be a more formal, painful and time consuming process that is not necessarily serving either the interest of those required to use it, or of justice.

I would recommend that the Senate Committee on Academic Dishonesty consider to providing a forum for discussion of possible sanctions as an available alternative. I would recommend for consideration policies such as that which has been in place at Carleton University for some time. It incorporates a "Dean's interview" where the student has the opportunity to meet with the Dean of the Faculty who will discuss the circumstances of the offense with the student. It gives the Deans significant authority to resolve matters on a consensual basis at this stage where circumstances are appropriate. The emphasis at this stage is on a remedial and educational rather than punitive approach but does incorporate considerations such as individual and general deterrence.

Inquiry 89-11/05 (11)

A faculty member contacted the office concerning an Application for Waiver of Tuition Fees that had been disallowed. The application was made to cover fees for a course taken by his spouse. She was auditing the course. The reason given to the complainant for the disallowance was that courses which were being audited were not covered by the University's Staff Tuition Assistance Policy because they were not for degree credit. He was told to either pay the tuition owing or to have his spouse withdraw, in which case a portion of the tuition would be refundable.

A review of the application documentation revealed that the Application had originally been approved and dated by the Personnel Office in September; complainant had not been advised about the problem until November.

I made some inquiries and determined that, had complainant been advised that the policy did not cover courses being audited, in all likelihood she would have been able to register in the course for credit. I also reviewed the Faculty Handbook and Application for Waiver form. The former did not indicate that courses taken other than for credit were not eligible for tuition waiver, but rather required that the courses themselves must be "degree credit courses". The course in which the complainant's spouse was enrolled was a degree credit course, but was not being taken for degree credit. Given the terms of the policy itself, it appeared that an equally plausible interpretation was that the policy would, in fact apply to audit courses as long as they qualified for degree credit in the academic calendar. Significantly, the Application form did not ask the applicant to specify whether the course was being audited or taken for degree credit.

Based on the above information, and the information I already had from Personnel, I advised them that I believed that the policy itself was quite ambiguous with respect to "listeners" and that, in any event, the complainant's situation had been prejudiced by the University's failure to pick up their "error" until long after the complainant's spouse could change her "listener" status. The Personnel Office agreed to allow the waiver in this particular case, while stressing that they were not, in so doing, accepting any different interpretation of the policy. They also acknowledged the ambiguities in the policy and stated their intention to implement changes to improve the wording of the policy to clarify eligibility requirements.

SERVICES
Residences

Inquiry 89-09/44 (12)

This inquiry originated with a second year student who had accepted an offer of residence accommodation, paid a deposit and first installment on account, and later decided to leave residence. This student had actually taken up residence in one of the halls before deciding to leave. She had inquired at the Residence Office about her refund at the time she gave her notice of intention to quit and was advised that she would lose both her $200.00 deposit, as well as a pro rated amount per week until her room was filled. She wanted to know whether the University was entitled to collect both the deposit and the weekly amount.

I reviewed the then current Residence Agreement with the student and came to the conclusion that the Agreement seemed to call for a forfeiture of the deposit only in circumstances where the student failed to take up his or her reserved place in September. I inquired at both the Business Office and at Residence Services concerning the University's policy. The former indicated that they merely followed the practice prescribed by Residence Services in issuing refunds. The Residence Office was initially unsure what formula was applied but ultimately were able to confirm that the information provided to the complainant represented current practice.

They determined that a revision to the refund schedule had taken place in 1985, in order to ensure that students who withdrew from residence in the first couple weeks of term did not pay less than those who cancelled their reservation prior to moving in. The new schedule required that the deposit be forfeited in either case. No corresponding changes were, however, made to the Residence Agreement to reflect this new policy.

Because Residence Services agreed that the current refund schedule did not conform with the Residence Agreement, (Which is a contract between the University and its resident students), it instructed the Business Office to refund the deposit to the inquirer and to all other students who withdrew after taking up residence during the 1989-90 year. The Residence Agreement has since been amended to reflect the earlier practice and intent.

SECURITY

Inquiry 89-09/13 (13)

The complainant had come upon two girls who were in her residence room (a single) without permission. One of the girls bolted, the other gave her room number but denied having taken anything from the room. The complainant soon noticed that an expensive pair of sunglasses was missing from her dressing table.

She went out to find the girl who had run off and noticed a twenty-dollar bill in a stairwell. She eventually found the girl locked in a stall in the washroom on her floor. She heard her fiddling with the toilet, on which she was sitting. When she came out the complainant questioned her concerning the whereabouts of her sunglasses and took her, with the help of several others, to speak to the hall chairperson.

The individual identified herself as having come from another residence and said that she was in the hall looking for a friend of hers. Further inquiries disclosed that she lived off campus. She denied having taken anything. The complainant's sunglasses were found in the tank of the toilet. Security was called and the suspected person escorted off of campus.

The complainant was anxious because she understood from Security that the individual would only be charged in the event that she laid a private complaint concerning the incident. She wanted to know whether there was any way the individual charged could find out whether she had laid the complaint and whether she should go ahead with charges.

I reviewed with her how a private complaint was laid and explained that an accused person's solicitor would be able to examine the information (sworn complaint) initiating a criminal charge and determine whether it was sworn by the police or by a private citizen. Any information made available to an accuser's solicitor is, in effect, the property of the accused and he or she is entitled to it if it is requested.

I encouraged her to consider the fact that the theft appeared to have been planned and that the individual in question had had a number of opportunities to "come clean" and had not done so. I also explained the magnitude of the theft problem facing the University community in general and the residence system in particular had suggested that she had a duty to cooperate in the prosecution of clear cases of theft.

It soon became apparent that the complainant was more than happy to cooperate but was fearful of possible reprisals if she "personalized" the matter by swearing the complaint herself.

I reviewed the applicable Criminal Code provisions with her and explained that it was possible for either the Hamilton Wentworth Regional Police or Security Services to swear

the complaint based on reasonable and probable grounds and their belief that an offense did occur.

With the complainant's consent, I contacted the Director of Residences, who explained that it had long been Security Services' policy to have students swear out complaints, even where more serious offenses were alleged. We both agreed that it was in best interests of the community at large to encourage persons like the complainant to cooperate in the prosecution of offenses and I suggested that together we might approach Security to reconsider its policy. The Director agreed to meet with the complainant and to speak to Security Services about swearing a "reasonable and probable belief" complaint.

The Director of Security Services agreed that in circumstances such as these, there was sufficient evidence to have security lay charges and agreed to do so. I believe that it is important that the University support individuals who have been victims of crime and I applaud the willingness of Security Services to provide that support where it is needed.

FINANCIAL AID AND SCHOLARSHIPS

Inquiry 90-01/02 (14)

The inquirer was anticipating difficulty in obtaining funds for her Canada Student Loan and OSAP. In September, she had been advised that she required a Social Insurance Card as identification in order to obtain payment to her of her student loan.

The student was born out of province and this created a delay, since she needed to provide a birth certificate in order to obtain a Social Insurance Card. She sent for a certificate but first was advised that she could not use an Ontario application form, and, after submitting the correct form was told that the fee had changed. After encountering further problems, she found herself into the second term without a Social Insurance Card and needing her funds for rent and other expenses. She had not yet been to Student Financial Aid.

The student had been to a Canada Manpower Office over the Christmas holidays and had obtained an official receipt containing her Social Insurance Number. Students often attend at the Ombuds office in order to have affidavits and declarations solemnized concerning their entitlement to financial assistance. I suggested that Student Financial Aid might be prepared to accept such an affidavit, together with verification of the Social Insurance Number in lieu of the card.

Financial Aid agreed to issue a cheque to the inquirer, on the basis of her particular circumstances, and on submission of independent verification of the S.I.N. using a Revenue Canada T-4 and a statutory declaration. In this way the Financial Aid office was assured that it was providing funds to the named applicant while at the same time

avoiding the creation of undue hardships for the student, who had made bona fide efforts to comply with the Ministry of Colleges and Universities' requirements.

Inquiry 89-10/32 (15)

This student approached the office concerned about the process by which a scholarship had been nominated for had been awarded. It had been the custom in his Faculty that persons interested in receiving a nomination for the award in question approach the faculty awards committee, who then forwarded worthy requests on to Student Financial Aid and Scholarships. This particular award was given on the basis of both academic and extra curricular contributions to the school, and the complainant had been advised that he would be the Faculty's nominee.

He had just learned that the deadline for submissions of nominations had passed and a decision made concerning the award without his nomination having been considered. Apparently Scholarships had not received the nomination from his Faculty until almost two weeks after the deadline, after interviews had been held. He had spoken to Financial Aid and Scholarships who brought the problem to the attention of the awards committee; they suggested he take the matter up with his Faculty. He wanted to know what could be done.

I contacted the Scholarships Office to determine whether there was any practical way to afford the complainant fair consideration for the award. Unfortunately, the award winner had already been notified. The student agreed that it would not be appropriate to ask that the award be divested from an announced winner. The Awards Office was able to advise, however, that the complainant's nomination had been brought to the attention of the Awards Committee Chair, who felt that the year's award winner was so exceptional that the additional nomination could not have influenced the outcome.

I contacted the Dean's Office to determine how the error had come to be made and what steps the Faculty was taking to avoid a repetition of the problem. Apparently the oversight was that of the Awards Committee Chair. A reminder had come to the Faculty from the Student Financial Aid and Scholarships Office but it had not been followed up on.

It was felt that the systemic problem was a lack of clerical support for faculty members with these responsibilities. It was agreed that administrative responsibility for forwarding nominations would be internalized within the Dean's Office which had more administrative resources and that a meeting would take place between the Dean, the student, the Administrative Assistant to the Dean and the Awards Chair to discuss the situation and how it was to be remedied. Finally, it was agreed that the complainant would receive consideration for any internal Faculty awards for which he was eligible.

Although the student was not pleased about what had happened, he was satisfied that all had been done that it was reasonably possible to do in the circumstances. I was able to

follow up with the Faculty in question to determine that significant improvements have been made to the awards mechanism to improve the "tickler" systems in place and to reduce the likelihood of a recurrence.

This case points up the fact that there are instances where a demonstrable wrong can occur without there necessarily being available a full remedy for that wrong. Where, however, the responsible administrator has the courage to acknowledge an error and do what is in his or her power to make the matter right, the feeling of injustice experienced by the wronged person can often be reduced.

MONEY MATTERS (FINANCIAL SERVICES)

Inquiry 90-08/05 (16)

The student inquirer brought this complaint after having completed a drop and add transaction early in the term. She had consulted the Spring/Summer Degree Courses calendar and had determined that the last day to register or change registration for courses in that term was three days after she had submitted her "Change of Student Record" form. Later in the term she received her billing which showed a tuition adjustment in the amount of $59.00. She inquired at the Financial Services Office where she was advised that the charge was made pursuant to the Refund Schedule in the calendar and that it could not be reversed.

I contacted several levels of personnel at the Financial Services including front line staff, a supervisor, manager and finally the Director to obtain an explanation of the basis for the decision. It was apparent that this particular problem had occurred with some regularity during the past several years. Line staff and supervisors both indicated that "we often hear this complaint".

Financial Services felt that, because the Spring/Summer Degree Courses publication contained schedules entitled "1990 REFUND SCHEDULES", any reasonable person seeking to drop and add courses would consult those schedules to obtain financial information concerning their decisions. These schedules indicated that the last date for full reimbursement of fees was four days before the complaint's "Change of Student Record" form was submitted. Financial Services therefore viewed this transaction as two separate transactions: the first being a request for refund which was for the full amount of fees, less $59.00 according to the refund schedules, the second, payment for the new course, which was for the full amount.

I reviewed the bookkeeping entries and other documentation that evidence the transaction. These do not appear to support this interpretation. First, only one form is used to both drop and add courses. Secondly, Financial Services themselves reflect only the balance of the two transactions on their Statement of Account, showing no refund at all, but rather a single notation showing "Tuitn Adj".

I obtained and reviewed a copy of the Spring/Summer Degree Courses publication. At page one under the headings "NOTE: DROPPING AND/OR ADDING COURSES" is the caution "PLEASE BE AWARE OF THE DEADLINE DATES FOR DROPPING AND ADDING OF COURSES". Across the page at page two under the headings "Important Dates" and "Last Day to Register or Change Registration" it gives one date for each academic term, and that date follows three days after the complainant made her change.

I felt it was significant that nowhere at the front of the calendar under either "NOTE: DROPPING AND/OR ADDING COURSES" or "Important Dates" was the reader referred to either the 1990 refund schedules or advised that other significant dates applied with respect to Financial Services.

In my opinion it was unrealistic and very unreasonable to expect users of this publication to read it in its entirety. People simply do not use reference materials in this way. Furthermore, it is unreasonable to expect that a person in this complainant's circumstances, who did not expect to receive a refund (she was dropping and adding simultaneously) to consult a table of refund schedules in the middle of the publication, unless she is put on notice to do so elsewhere in the calendar. The fact that drop and add period in the fall and spring terms coincide with refund schedules in those terms only reinforces me in this view. I strongly recommend that Financial Services make an adjustment in favor of this individual.

For the reasons outlined above, Financial Services refused to alter their policy in this respect. They did, however, accept that the Spring/Summer 1990 Degree Courses publication could more effectively communicate the University's policies if it were to contain a reference to the Refund Schedule under the headings "Dropping and Adding Courses" and "Important Dates" at pages one and two. They also advised of discussions with the Registrar's Office to try to bring the academic and financial dates for dropping and adding courses in line with one another.

As a result of these recommendations, several changes are scheduled to be made to the 1991 Spring/Summer publication to clarify the situation and put people on notice concerning additional charges which might apply.

Inquiry 89-04/15 (17)

The inquirer was a former McMaster student who had received a letter concerning moneys owing to the University. The complainant believed that she had paid all moneys owing to the University Prior to her withdrawal and had made inquiries at the Financial Services Office to obtain particulars of the debt.

The majority of moneys owing were on account of principal and interest on unpaid tuition fees and sundry library charges. The balance owing was for an emergency loan and interest thereon.

The complainant wanted confirmation of the amounts owing and felt that the interest charged was excessive, particularly in light of the fact that the University had never notified her of the debt through her parents, whose address she had left with them.

I urged the complainant to check her personal records for any evidence which might demonstrate that any or all of these sums had been paid by her. I met with staff persons from the Business Office to go over the account to both confirm the principal amounts and to review the basis on which interest was calculated. Both proved to be accurate.

As there was no evidence of payment of these amounts by the complainant, I focused my inquiry on why the complainant had not been contacted through her parent's home. With the inquirer's consent I reviewed the student file. It showed that originally she had given her parent's address as her permanent address. Before leaving McMaster, however, the file disclosed that a "Change of Address Form" was completed by the inquirer giving a local address as both her mailing and permanent address. One further change of address was shown on the file, changing from one local address to another.

One of the most recent documents on the student file was a Short Term Loan Request, which post dated the two documents alluded to earlier. It gave the complainant's parents' address as her permanent address. This form was not, however, submitted as a Change of Address form.

On the basis of this information I concluded that the student was largely responsible for not having received timely notification of amounts owing by her to the University. As a debtor, she had a legal obligation to seek out her creditor and to provide an address where she could be reached.

Because she had, however, provided her parent's address at the time of her application for a Short Term Loan, and because there was no evidence that either Student Financial Aid or Financial Services had tried to reach her there, I felt that charging interest on that sum at al annual rate of 19.6% was somewhat excessive. I recommended that Financial Services recalculate the interest pertaining to the Short Term Loan at 10%, more closely reflecting the cost of money to the University, and that the complainant arrange to settle her account.

Financial Services accepted this recommendation and I understand that the student, satisfied that her account seemed to be in order, reached an agreement to settle her debt.

COMPLAINTS CONCERNING DECISIONS OF CONSTITUENCY ASSOCIATIONS

The majority of concerns brought to the Ombudsman relate to administrative decisions made by persons whose authority originates in the University. It is for this reason that the term "MSU Ombudsman" is an inappropriate way to describe this office. That

moniker suggests that the kinds of concerns the office is charged with responding to involve decisions internal to the MSU. Because the University administration does not formally recognize the office, the term "University Ombudsman" is also inappropriate. In view of the fact that all of the major constituency organizations on campus (MSU, MAPS, MUSA, MUFA and GSA) now recognize and contribute toward the financial support of the Office, a more suitable description would be either Campus Ombudsman or simply Ombudsman's Office.

A number of inquiries and complaints are brought to the Office concerning decisions of constituency organizations, such as the McMaster Students Union, Graduate Students Association and the many clubs and activities sponsored by these organizations. It has been my experience that these organizations are often quite responsive to concerns of their constituents and are cooperative in circumstances where an independent investigation is called for.

Inquiry 89-10/27 (18)

This complaint was brought by several staff members of student association service. They felt that they had been misled as to their terms of employment at the time the offer of employment was made and that the compensation they were ultimately offered was insufficient for their efforts.

I indicated at the onset that as Ombudsman, I was not qualified to offer any opinion as to the fairness of their level of compensation in general terms. I was able, however, to look into the process by which they were hired and any representations made to them at that time and to provide a recommendation to the organization involved based on my findings of fact. On that basis they agreed to let me contact each of the parties involved to gather information, and to be identified with their complaint.

Each complainant alleged that at the time of their offer of employment, the Director of the service suggested that they would be compensated with a weekly stipend together with a commission based on sales payable upon collection of the account. The complainants alleged that the amount of the stipend quoted was greater than the amount actually paid on a weekly basis. The terms of employment, including remuneration were only communicated verbally and never confirmed in writing.

One of the complainants indicated that she was aware that the weekly stipend was under review and had indicated to the Director that she would not accept an amount lower than the amount that had been paid the year before. The Director indicated that he had already broached the matter with key players within the association and that getting the higher amount would be no problem. A number of the complainants had decided to forego other employment opportunities on the basis of the Director's verbal offer of employment.

I interviewed the service Director and explained the issues raised by his employees. The Director was very frank and open about what had transpired. He explained the history

behind the weekly stipend and that it had been reduced just prior to his term. He felt that the change would make it difficult to attract good sales people and had approached senior members of the association executive to have it changed. It had been his impression from their meeting that the change could be made easily and that they supported his recommendation. On that basis he had advised prospective staff that the stipend was likely to be increased. He indicated that he did not give any unconditional assurances but that he did give the impression that the change was "as good as done". He did recall that one of his staff had indicated that she was not prepared to work for the lesser amount and he told her that he did not think it would be a problem. He believed that the positions had been advertised in the Silhouette and that the lower weekly stipend had been included.

I reviewed all available documentation pertaining to the positions in question, including both the Silhouette advertisement and a poster which had been posted in the association office; neither indicated the salaries payable.

Based upon my investigation I drew several conclusions. The first conclusion was that the Director was an agent of the Association and was invested with the authority to hire employees. The second conclusion was that the director had the outward authority to bind the Association concerning terms of employment. The third was that most, if not all, employees of the service were misled by the Director into believing that they would receive better compensation than they actually did. I also concluded that several of the complainants had relied on the Director's representations in deciding to accept the offer of employment and that a number of them had turned down other employment opportunities on the basis of these representations. Finally, I concluded that the Association in question was largely responsible for this ambiguity, by not either clearly advertising the rate of pay or by confirming same in writing when the offer of employment was made.

I recommend that the association retroactively increase the weekly stipend of the complaints by a sum representing one half of the difference between what they were being paid and what some of them had been promised. The rationale for this recommendation was that the representations made to each complainant appeared to have varied and therefore their legal rights would also. It would be impractical and undesirable to compensate each employee differently based upon the Association's different legal exposure. Rather than differentiate between the employees performing essentially the same functions, I recommend the associations pay an average of the amounts it appeared they had bargained for with each of its employees.

I also recommended that the association amend its hiring practices to place them on a more business like footing. It was recommended that all employees, whether full or part time, permanent or casual receive correspondence from the association confirming the terms of employment negotiated at the time of the offer.

The association considered the information presented in my fact finding and my recommendations. After several meetings they decided not to follow my specific recommendations concerning the terms of employment of the complainants, but agreed

that my general recommendations concerning written offers of employment should be implemented.

The reasons given by the organization for not following this recommendation were not wholly satisfactory to me. First, they indicated that there was some variation in the evidence available and it was difficult to determine exactly what had transpired. Secondly, they cited a number of similar situations which had occurred in the recent past where the organization had refused salary adjustments. They felt that to acknowledge responsibility in this instance would set a precedent that they could not live with. Ultimately a written report with recommendations was prepared and provided to the parties and the complaints were encouraged to seek advise as to their remedies outside of the University.

Inquiry 89-09/07 (19)

This complaint was a particularly complex one involving several components. It serves as a good illustration of how one central office, like an Ombudsman's Office, can be helpful on a large campus where there are so many departments and where authority is so fragmented.

The primary complaint brought by the inquirer was that she was not being permitted to register for her programme. The reason this was so was because of outstanding charges on her University account. These charges were on her account as a result of disagreements she had with a number of the University services whose charges they were. There was also a related complaint pertaining to student association fees that were also unpaid. The amount owing was in excess of $25.00 and less than $100.00.

The policy that prevented her from registering was that of the Financial Services Office. This policy requires that students have less than a $25.00 balance owing on their account from the year before or less than a $100.00 balance from a previous term in order to register. When the complainant outlined her concerns with respect to fines applied by two other departments and her student association, she was referred back to those departments and associations to resolve the difficulties. In the meantime she was told to pay the balance owing.

The complainant was reluctant to do so, feeling that once the moneys had been paid by her there would be little incentive for the departments involved to negotiate. Because time was very much of the essence in this complaint, I agreed to make an expedited investigation into her various concerns in order to try to arrive at a resolution of the complaint before the last day to register.

With respect to the two University services with which the complainant had outstanding charges, I was able to determine that she had not taken steps on a timely basis to appeal or otherwise resolve those disputes. On this basis I recommend that she pay her outstanding fines and the corresponding interest.

With respect to one of these services, a campus library, the problem may have stemmed from the fact that patrons were not systematically notified of procedures available for questioning a library fine. The coordinator of that service agreed to recommend that a paragraph concerning questions or problems with fines be included in brochures made available to patrons. This has since been done.

The complaint related to the inquirer's student association was more difficult to resolve. She had held back certain sums of money representing that portion of her student association fee that pertained to health insurance. As an employed, part-time student, the complaint was covered by her employer's company plan and had no need for the coverage. She alleged that she had overpaid association fees for a number of years because she had not been made aware that she was paying in part for health insurance, or that the premium was refundable. She claimed that she had approached the association on a number of occasions for information and for refunds but was either misinformed or advised that her inquiry had come too late.

I looked into the history of the health insurance coverage offered by the association. It was originally offered by the association to its membership in 1984-85 and every year thereafter. After reviewing both registration newsletters and association publications for each of the academic years from 1984-85 to the date of the complaint, the first mention I could find of the availability of refund was made in a registration letter of August 14, 1987.

The association had, in a letter to the Board of Governors at the time of the institution of the plan, undertaken to make refunds available to members who could show that they had comparable coverage elsewhere.

On the basis of these findings, I recommended that the association issue the inquirer a credit with the Business Office equal to the amount of the premiums collected from her during those years prior to the notice in 1987. I further recommended that the inquirer pay the balance of tuition owing for health insurance fees payable since the date of notice.

This individual's complaint raised two further, more general issues. The first pertained to the legality of a mandatory fee collected by the University from association members for a charitable purpose related to the University and endorsed by the association. I reviewed the Letters Patent and Bylaws of the association, together with the unofficial minutes of the meeting where the fee was passed. Although some aspects of the proceedings were unusual, the record disclosed no irregularities which would make the association's action, taken at a general meeting, patently illegal. I therefore advised the complainant that the fee appeared to be properly imposed. She would receive a tax receipt for her contribution.

The final issue was whether, as a matter of policy, it was appropriate for the University to impose an academic penalty, (specifically withholding the opportunity to register) as a

result of a student's failure to pay a mandatory student association fee. I felt that this practice effectively foreclosed one effective means of dissent available to association members and exacerbated the power imbalance between the member and his or her association. In the context of University administration, the practice of imposing academic sanctions to enforce non academic charges may promote an undue reliance on this sanction to resolve disputes where the University may wish to encourage more reliance on reasoned discourse.

For these reasons I recommended that the Board of Governors reconsider Financial Services' general policy concerning student accounts and specifically, whether it wished the University to continue to enforce ancillary (student association and other) charges in the same way it treated balances owing on account of tuition, etcetera.

The Finance Committee of the Board of Governors did meet to consider these recommendations and unanimously confirmed existing policy and procedures. The Board apparently was of the view that the general policy was being administered as it had been intended and that dissatisfaction with student association charges could be dealt with through the electoral process.

VIII Human Rights Concerns (20)

This category comprehends many different kinds of inquiry, complaint and concern. Some cases simply involve an inquiry into current University practice to determine whether it is legally permissible. Several of these cases have been digested under other headings in this report. Others involve serious allegations of misconduct by one member of the University community toward another.

Although the statistics for the 1989/90 academic year denote an increase in the number of this kind of complaint since last year, they reflect an increase in the reporting of incidents of "gender bashing", homophobic activities and "poisoned environment" concerns. These latter kinds of incidents, while being serious complaints, are not the kind of guide pro quo harassment that involves a promise of reward or threat of penalty in return for sex that people often identify with human rights issues.

I view the increase in the number of complaints pertaining to abusive sexist language and "gender bashing" as a sign that the standard of community tolerance for this kind of practice is changing. I believe that the University could and should be more proactive in this area. Other campuses are using public forums in conjunction with educational films and videos to make the campus community more sensitive to these issues.

A proactive, positive approach to the problem of sexual harassment has much to recommend it. First, it treats the cause of the problem, rather than its symptoms or manifestations, (as does a more reactive, punitive procedure which comes into play only after the fact). Second, from a cost/benefit point of view it makes good business sense. Assuming that with an increased awareness of the potential for problems individuals will

behave in a more professional and self-critical manner, the University may be spared the loss of a number of fine scholars and staff who otherwise might become involved in this kind of activity.

IX Other (Non Caseload) Activities

A good part of the time spent by me as Ombudsman involves activities that are aside from the day to day caseload that is the "raison d'etre" of an Ombuds service. Most of this work is very fulfilling and satisfies the need for human contact in what is really quite a solitary occupation.

I have continued to make professional development an important component of my plan to improve the quality of service offered to McMaster's students, staff and faculty. During the past academic year I was able to attend the annual conference of the University and College Ombudsman's Association in Ann Arbor, Michigan and that of the Canadian association hosted by Universite Laval in Quebec City. Both were very worthwhile.

I also had the opportunity to host the mid winter workshop of the eastern section of the Association of Canadian College and University Ombudspersons here at McMaster. My colleagues were pleased with the workshop and commented on the beautiful campus that we sometimes take for granted here at McMaster. My thanks to the MSU and to the University, both of whom helped to make the conference a success.

My experience in the office has helped me to appreciate the value of negotiation and mediation techniques to the work I do as an ombudsman. In June of last year I was able to attend a forty-hour mediation skills course, offered by CDR Associates of Boulder, Colorado. This course was exceptionally good in that it treated multi-party as well as bilateral negotiations and mediations.

I have continued to be active in promoting the Ombuds service around campus this year. I have given presentations at the Student Representative Assembly, at the McMaster Association of Part Time Students, as well as at the Residence Services' Summit. I was also pleased to be able to take part as a facilitator in Summit this year.

I was pleased to have articles on a variety of topics published in the Silhouette, MAPS LINK and McMaster Courier during the course of the academic year past. I also prepared and presented a paper on the topic of "Ethical Issues and the Confidential Relationship Between the Ombudsman and His or Her Client" at the Association of College and University Ombudspersons' annual conference.

During the course of the academic year I was pleased to have been invited to become involved in consultations concerning a number of important policy developments at the University. These included meetings with the McMaster University Faculty Association Ad Hoc Committee on Sexual Harassment, members of the Senate Committee on

Academic Dishonesty, and with the Faculty Association in relation to the General Grievance Procedure for Faculty.

I also met with the Associate Deans of Studies and their academic assistants and advisors during the course of the summer. These meetings are quite beneficial to me and have proven useful in ironing out any misunderstandings or misconceptions which may occur throughout the busy academic year. This year I hope to be able to circulate the Annual Report more widely (in response to suggestions made by the Deans of Studies) and to meet with a number of the department chairs.

Finally, a great deal of work has been done by the MSU in negotiating agreements with the various constituency organizations across campus to make the Ombudsman's Office a shared cooperative service of the MSU, McMaster Staff Association, McMaster Association of Part Time Students, McMaster Faculty Association and Graduate Students Association. Credit is due to Steve Longo and Gary Collins, both of whom have consistently supported me in working toward this goal.

By the time this report is published it is my hope that the Ombudsman's Office will have a fresh policy, incorporating both an Advisory and Employment Committee, such that it will enjoy a greater degree of community support and autonomy in the future. With this foundation in place, the McMaster Community may look forward to the day when a fully recognized and funded Ombudsman's Office is in place on this campus.

McMaster University, 1990-91 annual report

Richard A. Russell

ACADEMIC CONCERNS

Inquiry 91-08/09 (1)

The inquirer was currently enrolled in a full time programme in level III. Two years previously he had begun his university career as a Mature student, having attained satisfactory standing on the scholastic aptitude test. McMaster's academic regulations require that all Mature students so admitted be placed on University Probation. The academic regulations further state that a student may only be on University Probation **once**.

The students in question performed reasonably well in each of his first two levels of work, his results of session showing him to be eligible to continue at the end of each. During his third level, however, he ran into trouble and finished the session with a university average between 2.0 and 2.5. As a result, this student was ineligible to continue except with the approval of his Associate Dean of Studies and on University Probation.

The Associate Dean advised the student that the regulations were clear and that the student was not permitted to be on University Probation on more than one occasion. The student was obliged to withdraw from his programme for a period of at least twelve months.

Had this student been admitted in the usual way, as a grade 13 or OAC applicant, he would normally have been permitted to continue on University Probation for one reviewing period. Had his performance been satisfactory he would have been able to regularize his status the following year and have had an opportunity to complete his programme.

The probationary aspect of the Mature Student admission process appears to be based on a desire of the university to ensure that its scarce resources are being used by those most able to benefit from them. Probation as an initial term of the admission offer to Mature Students makes sense because it permits the institution to efficiently "weed out" those students who lack the usual formal criteria for admission and who cannot demonstrate an ability to perform to the academic standards required of them at this level. Once students have demonstrated that ability, however, I see no justification for denying students who have chosen this admission route the benefit of University Probation which is available to others.

I recommend that the University amend its Academic Regulations to characterize the probationary status of Mature Students in some way other than "University Probation". In this way students who gain admission through the Mature Student route are not penalized with two "strikes" against them before they have even begun.

Inquiry 90-08/22 (2)

The inquirer was a continuing student who had completed his three year degree in a given discipline and was attempting to take courses required for an honors programme in the same subject. One of the courses he wished to take was an independent study course, normally only available to level IV students.

The student had been advised by his Faculty that he would need the permission of the department involved to take the course. He attended at the office of the Acting Department Chair (the Chair being on sabbatical) and was given written permission to take the course. When the Faculty received the written permission slip they balked at approving the registration because it was so unusual. They contacted the Chair, who also taught the course, and who had since returned from sabbatical. The chair rescinded the Department Permission and the student was asked to choose another course. It was at this point that he visited the Ombudsman.

The student indicated that he had by-passed other opportunities to attempt to complete his Honours programme at McMaster. He had relied on the Acting Chair's advice that he could do the programme on a course by course basis and that if he were to achieve

honours standing (a 7.0 cumulative area average), he would be permitted to graduate in the Honours programme.

I investigated his allegations and discussed the matter both with the Faculty involved and with the Department Chair. The Faculty confirmed the student's version of events but took the position that the departmental permission was not binding on either them or the University. The Department Chair believed that the Department was not bound by the decisions of an acting Chair.

I explained the fact that the students had forgone other opportunities on the basis of the Departmental Permission and the Faculty's advice that all that was required was that permission. I also explained the legal concept of ostensible authority.

Third parties dealing with the University are entitled to rely on decisions made by persons in the organization who have the outward authority to make those decisions, in this case the Acting Chair. I also suggested that if the Faculty involved disapproved of the student approaching the Department for permission, it was incumbent on them to advise the students that the course of action being contemplated by him would, under no circumstances be approved by his Faculty, regardless of departmental permission. I did indicate that the students might well have a cause of action for breach of contract in these circumstances.

Ultimately the department involved relented and gave permission for the students to take the course.

Students and other individuals dealing with the University at arm's length are entitled to rely on information or decisions made by persons with the outward authority to make those decisions or to provide that information. Mistakes will always happen. In circumstances where the third party has relied on that erroneous decision or information to his or her detriment, the University is responsible to bear the cost of its mistake and not the individual who has gone to some trouble to obtain an authoritative decision.

Some consideration needs to be given to the different spheres of authority of the Faculties and Departments, at least where undergraduate students are concerned. Too often neither office can provide students with a clear understanding of whose decision he or she needs in a given set of circumstances. Too often students are given to understand that departmental approval is all that is required, only to find that upon obtaining that approval the Deans of Studies office will not accept it. This wastes a good deal of the time of both Faculty and Departmental staff and a great deal of the student's time and patience. In the world at large this is called a "run around" and is considered poor service and inefficient administrative practice. I am sure with some thought we at McMaster can do better in this area.

Inquiry #91-05/05 (3)

The inquiry was from a student in the fine arts. The student had just been advised that she was likely to achieve a failing grade in an upper year independent study course in studio art. This course was a prerequisite for the final year course which was a requirement for the honours degree toward which she was working.

The student was disappointed and upset. Obviously failing the course was cause for a good deal of her concern. She was also disappointed to have been told that she was likely to fail given that a portion of the term work, a thesis worth 33% of the grade, had not yet been market.

The reason that she was going to fail was apparently because the body of her own art work was not satisfactory to the course instructors. The weight assigned for the independent work was great (67%) and therefore the instructors were in a position to assess whether or not her thesis could possibly put her "over the top" so to speak.

The student felt that her poor grade for her independent work was unexpected and unfair, particularly since she had received a B- as her December interim mark. Unfortunately, several pieces of the inquirer's work had, through no fault of her own, been destroyed so that a re-mark was not available to her.

The student met with several members of the department and was persuaded that her work required further development before she could be successful in completing the independent study course. This, along with the loss of the work in question, caused her to abandon the pursuit of a Student Appeal. Her situation did raise several issues pertaining to the grading practices in the department and as a result I initiated a meeting with those members of the department providing studio courses.

Much of the assessment or feedback that art students receive concerning their work is provided by means of critique or "crit" sessions. These sessions occur throughout the term, approximately once per month. At each session students will show some of their work and receive questions and comments by way of assessment from both the studio instructors in the department and their peers. Students are encouraged to show finished pieces only.

The inquirer indicated that on several occasions in term one she had no finished pieces to show. When she did she felt that she had been encouraged to continue on in the direction she had been going. No scale or objective method of measurement is used at critiques, rather students receive more generalized comments from which they may draw inferences. In addition there are occasionally times when the group is unable to deal with the work that all students bring to a session.

The department seemed to be aware of how difficult students found it to obtain reliable feedback in studio courses. They felt that they were required to balance the need to encourage risk taking and exploration with the need for clear and reliable feedback. They

also did not wish to assign too great a proportion of the grade too early in the term for fear that students who were able to "bring their work together" at the end of the year would not receive enough credit.

The department agreed to use a systematic approach to feedback in "crits" to ensure that each student received informal feedback on at least on occasion each month. They are also going to provide mid-term grades using a recognized grading scale several times a term, along with brief written comments, to assist students in assessing their progress in the course as it progresses.

I believe these developments will have a beneficial effect, not only on the performance of students, but also on the entire assessment process, making it easier to monitor progress and areas of difficulty and ultimately making it easier to assign and defend grades.

GRADE ADJUSTMENTS OR "BELLING"

Inquiry #90-10/17 (4)

The complaint arose because a student was unable to determine how her final grade had been arrived at. She had gone into the final exam with an A+ or 12 on a 12 point scale and received a final grade of B or 8 on a 12 point scale.
The student had spoken to the instructor after receiving the mark and was advised that the class as a whole had marks that were "too high" and therefore the grades were adjusted in line with students' exam results (the exam marks having been more evenly distributed between high and low grades). She had not come away with a clear understanding of how the grade was calculated.

The complainant was made aware of the Senate Resolution Re Course Outlines and it was suggested that she reattend with the instructor in order to obtain a better idea of how the final grade was calculated. She did re-attend but reported that the instructor became quite defensive and did not provide her with the basis for his decision. She decided to ask for a re-read of the final examination.

Upon filing for a re-read, the student was advised that the score for one of her three 10% term tests had been missed inadvertently and that the grade was to increase accordingly. She was also advised that because the course grades were too high a "correction factor" was applied which reduced the grade from what she had calculated it to be arithmetically using the Course Outline as a guide.

I contacted both the Senate Office and a number of Deans of Studies offices to determine whether either the University or any of its Faculties had policies on grade adjustments. I was advised that no such policies existed. One Dean of Studies offered the opinion that if an instructor wished to reserve the right to adjust grades he or she must so indicate on the Course Outline.

The Undergraduate Calendar, at page 14 discusses McMaster's Grading System:

> The grade for a course is normally determined by combining the grade obtained on classwork, assignments, tests and examinations. The method for determining the final grade is to be given in the course outline. Unless otherwise specified in a course outline, course results determined on a percentage scale will be converted to an official letter grade as indicated in the equivalent percentage scale which follows. The results of all courses attempted will appear on your transcript as letter grades.

The Calendar then goes on to outline the grading scale used by the Register's Office to convert percentage grades into letter grades and points.

Students are entitled to know how their work is being evaluated. Marks are the "hard currency" of academic life and many important decisions about students and their future academic prospects at this institution and at others are made on the basis of them. The Senate Resolution Re Course Outlines acknowledges the responsibility of educators to communicate their intent in these matters and provides a mechanism for doing so.

When "floating scales", "bell curves" or other methods of grade adjustment are applied to the arithmetical scores which students achieve on tests, assignments or other methods of evaluation, the least students should be able to expect is that they will be advised that such an adjustment has taken place. Once notified they can inquire into the fairness of the system used and the reasons for its use. If they are dissatisfied with either the reasons given or the system used it is open to them to appeal.

Given the University's stated policies on grading as published in the Undergraduate Calendar, the legality of the practice of adjusting marks is highly questionable, particularly in circumstances where no express reservation of that right appears in the course outline.
I would therefore recommend that Senate amend the Senate Resolution Re Course Outlines to deal explicitly with grade adjustments. I would further recommend to Senate that instructors who wish to reserve the right to adjust marks be required to indicate so on their course outlines and make available to students the system used.

Instructors should be required to indicate clearly, both to students whose marks are affected and to their departmental and Faculty reviewing committees, that a grade adjustment has been made such that further inquiries into how this was done can be made. Further, the academic calendar should indicate to students that grade adjustments may be made and what principles must be followed when this is necessary.

CONCERNS OF GRADUATE STUDENTS

Inquiry #91-01/40 (5)

The complainant approached the Ombuds Office to find out what had gone wrong. Three days earlier he had met with his supervisory committee concerning his research. They expressed satisfaction with the progress that he had made and were apparently of the opinion that he would be finished with his work within six months.

The following day he was called into his supervisor's office and a demand was made that he withdraw from his programme. His supervisor, the department chair, indicated that the complainant had plagiarized a portion of a paper in a course taught by another instructor in the department. He asked that the complainant sign a note indicating his intention to withdraw voluntarily from the programme.

The complainant claimed to know nothing about any plagiarism and protested his innocence. He refused to sign the note. The supervisor became quite irate and insisted that he hand in his keys to the lab at once and leave immediately. According to the student a threat was made to call campus security if he did not comply. He did.

The complainant attended upon the instructor of the course. He asked to see the paper and to discuss the allegation. The instructor refused and said that it was between the student and his supervisor and he did not wish to be involved. Shortly thereafter the instructor left the country for several weeks.

Less than one week later, the complainant received a letter from the associate Dean of Graduate Studies notifying him that he was being required to withdraw due to his failing grade in the course he was alleged to have plagiarized. The letter explained that he could request either a Formal Inquiry or a Hearing under the Student Appeal Procedures.

The student submitted a request for a Formal Inquiry, alleging that the paper itself had been assigned after the completion of the course and further that the Senate Resolutions Re Academic Dishonesty had not been complied with. He asked to be reinstated into his programme.
The response to the Request for Formal Inquiry indicated that the decision that he be required to withdraw was made by his faculty Graduate Admissions and Study Committee on the same day that he was charged with academic dishonesty but before the mark of F was assigned in the course. It went on to indicate that the decision was made by the Committee without reference to the charge of academic dishonesty. Because the F had not yet been assigned at the time the decision to require him to withdraw was made, the grade was improperly entered and was removed with an "Incomplete" substituted therefore. The "F" could therefore not be appealed. He could, however, appeal the decision to require him to withdraw.

The students tried to find out the basis for the decision to require him to withdraw. He requested a copy of that portion of the Minutes of the Graduate Admissions and Study

Committee meeting that pertained to him. He also wanted to ascertain whether the allegation of academic dishonesty was considered at the time that the decision to require him to withdraw was made.

What the student received were extracts of the minutes, indicating the motions that were made concerning him. The discussion which surrounded these motions was not made available, it being the University's policy that the minutes themselves were confidential. There was, therefore no way for the student to ascertain whether the allegation of academic dishonesty was considered in arriving at the decision that he be required to withdraw.

A request to the School of Graduate Studies for access to the departmental file concerning the student was denied on the basis for those files were not the property of or under the control of the School of Graduate Studies.

Ultimately, the student was able to obtain access to both his paper and the article from which it was alleged he had plagiarized. He took advice concerning the charge of academic dishonesty and concluded that he had unwittingly, committed plagiarism. Based upon his conclusion he abandoned his appeal of the decision to require him to withdraw.

This case points up a number of concerns. First it is an excellent illustration of why it is necessary to adhere strictly to the Senate Resolutions Re Academic Dishonesty. Had the instructor of the course taken the time to speak with the student whose paper he felt was plagiarized, as the Resolutions require him to, the student would have been made aware immediately of the serious deficiencies in his notations. Further, the student would have been afforded the opportunity to present his explanations for these deficiencies **before** any decision was made about what penalty should be applied.

Secondly, this case indicates that there is a need for a University-wide policy concerning protection of privacy and access to records. This policy should, I suggest, be universal in application, applying equally to the records of all individuals whether student, staff, or faculty members of the University.

The policy also needs to be comprehensive in that it must apply to **all** records concerning an individual, whether in the "official" University file, or in the file of a given department or unit. Department managers or chairs must be bound by this policy in the same way the Registrar's office, Personnel Services and the Dean's offices are.

Obviously there may be a need to deal explicitly with the different kinds of records involving individuals in each of these categories. I would, however, urge the University to adopt a policy that applies the same principles to any request for access to records, whether that request comes from a graduate or undergraduate student, staff or faculty member.

The Council of Ontario University (COU) has recently endorsed guidelines to assist member institutions to develop policies in this respect. These guidelines are based upon the principles enunciated in the Freedom of Information and Protection of Individual Privacy Act (1987). I would commend the Council of Ontario Universities' Report of the Special Committee on Freedom of Information and Individual Privacy to the University's attention in the development of such a policy.

A QUESTION OF PROFESSIONALISM

Inquiry 91-06/05 (6)

This inquiry originated with a concerned department chair. Several colleagues had brought to her attention a rumor that one of the instructors in her department was involved in a romantic relationship with a student currently under his supervision. The chair had no first hand information and was interested in knowing what her responsibilities were if such a relationship existed. She was particularly interested in knowing whether any University policy prohibited the continuance of the supervisory relationship in these circumstances.

Another member of the department attended at the office. He advised that he had spoken to the supervisor in question who had denied the rumours. He was concerned, however, that his colleague saw nothing inappropriate in such a romantic relationship co-existing with a supervisory relationship which included evaluation of the student supervised.

I reviewed current University policy and was surprised to learn that the Senate Conflict of Interest Guidelines do not address the potential for conflict of interest in these circumstances. The Guidelines differentiate between Undergraduate and Graduate Studies. The Graduate Studies Guidelines provide that:

> There shall be no prohibition on the grounds of family relationship against the admission of persons as full or part-time graduate students or against the eligibility for financial awards of such persons. Faculty members normally shall not take part in any proceedings at any level which affect the graduate standing of a spouse or other relative (including admission, financial assistance, promotion, courses or instruction, and supervisory, thesis and examining committees). It is understood that the merits of each individual shall be the overriding consideration in all such cases.

The Undergraduate Guidelines are somewhat more extensive in that they provide examples of family members and include "common-law partners" among them.

Neither Guideline comments on the advisability of entering into consensual intimate relationships with students while supervising or otherwise evaluating them.

The Canadian Association of University Teachers (CAUT) has developed guidelines for its members. The Policy Statement on Professional Rights, Responsibilities and Relationships suggests that it is inappropriate for an instructor to maintain a sexual relationship with a student while that student is under his or her tutelage. These guidelines are not binding on individual instructors and do not have the force of University policy.

Appendix II to the CAUT Guidelines, dealing with abuse of professional authority, reads:

> 6
> These principles are not intended to inhibit normal social relationships or freedom of expression which are in accord with professional ethics as set out in the CAUT Policy Statement on Professional Rights, Responsibilities and Relationships. An individual entering or involved in a sexual relationship with a consenting adult who will be or is subject to that individual for evaluation or supervision should decline or terminate the supervisory or evaluating role.

Both in its Preamble and in Appendix III under the heading "Enforcement of Codes of Professional Ethics" the CAUT Statement addresses the need for institutional policy:

> The Canadian Association of University Teachers does not certify individuals as members of the profession, nor can it exclude them; neither has it the power to grant employment or to withhold it. Therefore, implementation of any code of professional ethics must lie with individual colleges and universities.

I believe that McMaster has a clear interest in ensuring that the evaluation process used at the University is and is seen to be fair and even handed. With this in mind I would strongly recommend that the University, in consultation with the McMaster University Faculty Association, develop an ethics policy to deal more completely with conflict of interest and other important ethical issues.

Such a policy should also address explicitly the right of faculty members and students to enjoy a classroom atmosphere in which teaching and learning can take place (ie. the freedom to take reasoned exception to the views offered in the classroom). Finally, the issue of civility should be addressed. Both faculty members and students should be able to insist upon scholarly relationships based on mutual respect, trust and civility.
Although we would all like to believe that these kind of fundamental principals are sufficiently well understood and practiced at McMaster that a University policy would be redundant, the number of concerns of this nature being brought forward by students, faculty and staff suggests a need for a more explicit statement and appropriate procedures for redress where necessary.

Inquiries 91-03/33 and 91-06/05 (7)

Two females attended the Ombuds Office independently of one another to complain about treatment each had received from their instructor. The complaints were remarkably similar in kind and involved the same instructor.

The conduct complained of included abusive behavior in the sense that each of the students was treated contemptuously by the professor involved. One of the complaints came on referral from a senior administrator who had indicated to the Ombuds Office that this complaint was similar in nature to several earlier complaints received by him about the same instructor.

Both individuals related incidents where they had been chastised for having submitted essays which were considered off topic by the instructor. In one case the student claimed to have gone over the topic before hand with the instructor, in the second case the student claimed to have tried without success to meet with him and gone ahead due to time constraints.

Both persons found the professor to have been extremely rude and dismissive of them. He asked one of them questions which appeared to be designed to demean her in front of several of her peers. The other was asked questions which clearly called into question her intelligence, aptitude and scholarly integrity. Both indicated that the tone of voice and non-verbal queues employed were very personal in nature and insulting. Both indicated that they were angered and shaken by the experience.

At my suggestion and that of the administrator involved, both students prepared a letter to the department chair describing the conduct and requesting an apology from the instructor. A copy of the letter was sent to the instructor. No response was forthcoming.

The referrer in this case was distressed to learn that the treatment allegedly accorded these students, which he felt was disgraceful, did not infringe any specific University policy, and was not, therefore subject to clear action on the part of the students affected.

The Senate Statement on Human Rights was not applicable in these circumstances because their was no evidence that the treatment received by either of these students was unequal by virtue of any of the outward characteristics described in the Ontario Human Rights Code such as race, creed, nationality, sex etc. Although the behavior described was clearly unprofessional, and not in keeping with the educational mission and function of the University as an institution, the Faculty and Department involved felt that they were without sufficient institutional authority to warrant either disciplinary or remedial action. The situation was left for the most part unresolved.

The Faculty involved agreed to arrange for independent re-reads of the assignments in question. The re-reads confirmed the grade in one case and resulted in the grade being raised in the other. Neither student received either an apology or an acknowledgement from the instructor involved.

These cases point out the difficulty which all educational and other public institutions face where "civility" issues are concerned. Private organizations which offer professional and other services have a market incentive to treat customers or users politely and with courtesy. Any employee whose position places him or her in regular contact with the firm's patrons will have a significant incentive to try to maintain a decent relationship with the firm's customers. After all, the amount of business he or she generates through contact with them will determine his or her remuneration and often will impact on his or her job security. At a University there is no such built in incentive.

I would therefore recommend that the Senate adopt guidelines for professional responsibility and conduct which include civility issues and conflict of interest as set out above.

CONSUMER COMPLAINTS

Inquiry 91-08/17 (8)

A student in the Faculty of Engineering came with a consumer complaint. At about the time of her acceptance into Level 1 of the Engineering program she had received a letter from the Associate Dean's office welcoming her to the Faculty and inviting her to take advantages of several commercial opportunities available to her. One such opportunity was an introductory demonstration of computers and the second was a chance to purchase the "Mac Eng Micro Programme" (the Programme).

Enclosed was a brochure bearing the University and Faculty of Engineering crests which described the Programme. According to the brochure the Programme included a package of hardware and 3 software programmes including a language, word processing and spread-sheet programmes that were compatible with one another and chosen with the needs of Engineering students in mind.

The student was impressed by the package offered and ordered the "Mac Eng Micro Programme" from the Microcomputer Centre based upon the information contained in the brochure, using a form provided for this purpose and enclosed with the letter and brochure. At the time she purchased the package there was no discussion concerning the software. She expected that the same software described in the brochure would be included in the sale price.

At the time she took delivery, the invoice she received listed only the hardware. After having paid for and moved the computer to her vehicle, the complainant asked whether the software was enclosed in the packages she had been given. At this time she was advised that the Programme no longer included the software systems described in the brochure. According to the staff person with whom she spoke, the brochure was out of date and did not reflect the current package offerings. The complainant was disappointed but decided to take the package anyway. She attended at the Ombuds Office to inquire into what responsibilities the University might have toward her.

I contacted the Microcomputer Centre and spoke with the Manager. She agreed that the information distributed to students in the form of the brochure was out of date and misleading. She indicated that most student customers considering the package were advised at the time they came to look at the computer systems that software was not included. In the case of this complainant and others who were not so advised, the Microcomputer Centre was prepared to offer a credit equal to the value of the most costly of the software programmes described in the brochure. The complainant was contacted and accepted this as a reasonable accommodation in all of the circumstances.

This case indicates the need, at a large institution like McMaster, for the right hand to know what the left hand is doing. From a departmental perspective it is easy to feel that "our department" cannot be held responsible for an error or omission over which we had little or no control. From the perspective of the individual dealing with the University, however, any information emanating from an authoritative source within the University is likely to be relied upon.

I feel that the University behaved quite reasonably toward this student, and the student, to her credit, did not take undue advantage of the situation.

Inquiry 90-12/20 (9)

This complaint concerned a situation that was not entirely within the University's control. She was a qualified OSAP recipient in her first year. She had received her Notice of Assessment which indicated that she would receive sufficient funds from Canada Student Loans (CSL) and the Ontario Student Assistance Plan (OSAP) to pay her residence and tuition fees. She had received her first installment (the CSL portion) and was told to expect the OSAP portion by January.

Unfortunately the University requires that 70% of the fees from the entire academic year (in her case two four month terms) be paid in August/September. The portion of financial aid received by her was closer to 50%. She had been advised that a late payment charge ($30.00) and interest at 1.5% per month would be charged against the outstanding balance until it was received in term two.

She contacted the Ministry of Colleges and Universities, who administer the OSAP plan, and was advised that they would not adjust the award to include an amount for interest. They indicated that it was the student's responsibility to make up for the difference.

Out of curiosity I inquired at a number of other Ontario institutions concerning their policies and practices in this respect. Although policies varied from institution to institution, there was a clear pattern which indicated that most institutions charge a nominal deferment fee (approximately $35.00 or a small percentage of the amount being carried), but few charge interest on top of the Late Installment Fee of $30.00 as McMaster does.

While I concluded that the individual was not being wronged in this sense that she was being treated less favorably than other individuals, in the same circumstances at McMaster, she and others like her were certainly placed at a disadvantage compared to financially aided students at many other institutions in Ontario.

I would therefore recommend that the Finance Committee of the Board of the Governors reconsider the University's current policy regarding fee determents for qualified OSAP and CSL recipients to consider putting McMaster students on the same footing as their friends at Guelph, Trent, York, Waterloo and other universities.

RESIDENCES: A MATTER OF BALANCE

Inquiries 90-11/09, 91-10/23 (10)

Each academic year there are a number of very troubling occurrences within the residence system. Often these incidents involved alleged harassment of one resident by another, sometimes involving threats or actual violence resulting in injury or damage to persons or property. In every such case the University has an obligation to act swiftly and decisively to protect its property and those living in the residences from anti-social behavior. In such cases the University also recognizes a responsibility to act fairly towards both the complainant and the person whose actions are being complained of.

The Residence Discipline Code reserves to the Director of Residences the exclusive authority to expel residents or to place them on probation. The Code also sets out a procedure for handling complaints and disciplinary offenses.

Serious complaints are brought to the attention of the Director of Residences who is required to interview the accused person and any witnesses to ensure that all relevant information is brought out. The accused person is entitled to hear and respond to any such accusations before any disciplinary action is taken. Note that this procedure does not take the from of hearing in the traditional sense; the accused person seldom if ever gets to face his/her accuser and often is not advised of the source of the information and/or complaint.

If the official is satisfied that an offence has occurred, he or she will decide if a sanction is warranted and if so will consider the normal sanctions applicable, the number and nature of any previous offenses and any extenuating circumstances disclosed by the investigation. He or she will then decide on the sanction to be levied and communicate it, normally in writing, to the student.

If the penalty applied is expulsion, section 14 of the Code requires that the expelled student leave residence within 24 hours of the sanction being imposed **even if the student appeals the expulsion.** In the event that the student is successful on appeal, the only remedy available is the first available residence space for which he/she is eligible.

There is no provision in either the Residence Discipline Code or the Student Appeal Procedures to protect the status quo (ie. The student's right to return to residence) pending a full hearing.

In the Matthews Hall case, most former residents of the Matthews Hall were advised in June of 1989 that they were being suspended from residence for one year due to massive damage done to the Hall. Their hearing before the Senate Board for Student Appeals was not concluded until the spring of 1990 and the decision not handed down until mid summer of that year.

Despite the fact that the appellant was successful, the net result was that none of the former residents in fact took up residence in the residence system until the 1990-91 year and even then many of them could not be accommodated for the entire year, because most residence spaces had already been offered by the same time the decision became known. Here was clearly a case where justice delayed may be seen to be justice denied.

Under the Code a student who feels a sanction is unfair may appeal to the next higher level in the disciplinary hierarchy. In the case of an order of probation, suspension or expulsion that would involve an appeal to the Dean of Student Affairs. The Dean of Student Affairs then conducts what the Student Appeal Procedures call a Formal Inquiry, considering both the student's written submission and the reasons given by the Director before giving a decision. **This process, like the Director's investigation, does not involve a hearing in the ordinary sense,** and there is little or no opportunity for the appellant to test (by the way of cross examination or otherwise) the case against him or her. That decision may then be appealed to the Senate Board for Student Appeals (SBSA) which does conduct a full hearing.

By the time a student finds him or herself at a SBSA hearing several months have invariably passed. Most appellants will have had to make arrangements for alternative accommodations, particularly since expulsion carries with it persona non grata status within the residence system. On many occasions the hearing will take place in a different academic year, particularly since the Senate Board for Student Appeals does not sit in the summer months.

For the foregoing reasons, most students attending the Ombuds Office find that the Student Appeal Procedures provide no meaningful means of redress in circumstances where they have been expelled or suspended. Many also find that their position has been further prejudiced by the passage of time because witnesses have moved or are unavailable to have become involved in residence government and do not want to "rock the boat" so to speak. Only a small number take the matter forward to a hearing.

What is required is a practical system that properly balances the University's legitimate need to protect itself and its students from anti-social and dangerous behavior and the accused person's legitimate need to fully understand the case being made against him and to be given the opportunity to meet that case before an independent body in a timely manner.

I would suggest that the University amend its appeal procedures to provide a summary hearing procedure to be available in all circumstances where a student can demonstrate that serious or irreparable harm will be caused by the time required to invoke the ordinary appeal process. Pending this hearing, the appellant may be removed from the residence system, based upon the Director's findings, but a place in the system (not necessarily the original room assignment) should be kept available pending the outcome of the summary appeal.

In the context of Residence Disciplinary Code appeals, I would suggest that Senate consider substituting a time-limited, informal hearing in place of the Formal Inquiry stage of appeal. The hearing board might be composed of persons knowledgeable about McMaster's residence system, such as a delegate from the Inter-residence Council, a Hallmaster and a senior faculty or staff member. The Board should be given strict guidelines as to when a decision is required and appellants should be required to adhere to strict time limitations in order to appeal to this body.

A Board with this composition would likely enjoy a great deal of credibility within the residence community and would likely reduce the number of residence matters that had to go before the Senate Board for Student Appeals. Such a procedure would not impair the ability of the University administration to respond quickly to dangerous situations, while at the same time affording appellants access to a meaningful remedy where circumstances warrant it.

Inquiry 90-10/41 (11)

The inquirer had applied for a parking permit and had paid the required fee. She had requested that the permit be mailed to her. By September 1 she had not received the permit and was moving to a new address. She attended the Parking Services Office on September 4 and advised of her new address, inquiring into the status of her application. She was advised that the permit had been mailed to her the week before.

She checked with her former roommates, who indicated that no letter from Parking Services had been received by them. By the end of September she spoke with the Parking Services Manager about obtaining a replacement pass. He advised that one could be issued but that she would be required to pay a $10.00 replacement charge, since presumably it had been received and lost. Because she had never received it she did not feel it was fair to impose a further charge and approached the Ombuds Office.

I contacted Parking Services and she advised that it was the policy of the President's Users' Traffic and Parking Committee to require the $10.00 replacement charge to be levied except where users could demonstrate that the pass had been destroyed (ie. By bringing in pieces of it). Parking Services indicated that it did not have discretion to waive the charge, even in circumstances such as this where they did not disbelieve the user.

I wrote to the Parking Committee questioning whether this was, in fact, their policy and questioning its fairness and legality. Although the Chair of the Committee did not reply to my letter and recommendations, the complainant later advised that a permit had been re-issued to her without charge or penalty. Furthermore, Parking Services did amend its Application to clearly indicate that applicants who request that their permits be posted accept the responsibility for them should they be lost. All applicants are, of course, given the option of picking up their permits personally. This procedure at least informs users of the assumption of risk if postal delivery is requested and makes it clear that the assumption of such risk is voluntary.

Faculty and Staff Concerns

Each year since I have been Ombudsman there has been a gradual, but steady increase in the number of concerns brought by faculty and staff to the Office. I am pleased with this development and try to make the office accessible and useful to staff and faculty members alike.

During the 1990-1991 academic year I was able to work with a number of individual staff members with employment-related concerns, many of which centered around supervisory relationships.

The Handbook for Salaried Staff, which is currently being revised, sets out the grievance/complaint procedure that staff are to follow in the event that they are dissatisfied with a decision or action. "Complaints" are broadly defined as many work-related problem.

"Grievances" are much more narrowly defined as "a specific complaint arising out of the interpretation, application, administration or alleged violation of the University's written personnel policies (excluding salary and benefit policies) which are summarized in the Handbook for Salaried Staff."

Complaints and grievances are both processed through two steps, the first being the presentation of a written statement, outlining the complaint or grievance and indicating the remedy sought, to the immediate supervisor. The supervisor is required to meet with the employee to discuss the problem and to provide a written reply within ten working days.
If the staff member is not satisfied with the resolution at this stage he or she may, within ten working days, present the original complaint to the supervisor's immediate superior (manager). The manager will then meet with the supervisor and the staff person and must provide a written reply within ten days of the meeting.

In the case of a grievance only the staff member has the right, upon receipt of the written reply of the manager, to request a Board hearing. The employee may nominate one person to the Board. The supervisor's superior will also nominate a Board member and each of the nominees will agree upon a third person to chair the Board. The Board may then hear the grievance, make findings of fact, and determine whether there has been

a breach of written University policy. They may then report on their decision and make a recommendation to the President. The President may consult where appropriate and "decide upon what action, if any, is to be taken regarding the remedy sought by the grievor."

Complaints are not subject to this third step in the process and are often left unresolved from the staff member's point of view.

Many of the concerns that staff bring, both to the Staff Association and to the Ombuds Office, do not fall within the definition of "grievance" contained in the Handbook. Issues such as when lieu time may be taken, entitlement to sick benefits and changes to the hours of work may or may not be subject to a Board hearing depending on the exact circumstances of a given case. Staff are often placed in the unenviable position of requesting a Board hearing without knowing before hand whether a matter is a "grievance" or only a "complaint". In order to find out they must risk exacerbating an already conflicted situation by taking issue with the decision of their supervisor's boss.

Many employees prefer a less adversarial approach to the problem. They do not wish to make the manager's response to the grievance the issue. Many are not interested in proving anyone "in violation of written University policy", but rather would prefer to overcome the problem and become more effective in their job. I have worked with a number of these persons and their managers in facilitated meetings directed toward this purpose. The results, by and large, have been satisfying and have met the needs of both employees and their supervisors.

In developing grievance procedures for both salaried staff and faculty, I would encourage the University, Faculty, and Staff Associations to build in consensus building processes like mediation and facilitated meetings which focus resources on the problem, rather than the strict rights of the individuals who happen to be involved in bringing the problem forward for consideration.

I believe McMaster could benefit greatly by training a panel of facilitators from among its faculty and staff in the mediation process and incorporating the use of the panel to resolve internal disputes more constructively. Such a system could result in direct savings in terms of the number of issues that go to a win/lose style hearing as well as realizing the indirect benefits of a process which emphasizes maintaining and improving relationships wherever possible. A fringe benefit is that the problem solving skills taught in mediation training and employed in its practice are readily transferable to the work place.

Obviously such an approach cannot effectively resolve all disagreements and it would be necessary to supplement such a programme with good policies and procedures for fact finding and adjudication where required.

Inquiries 91-03/23, 91-07/09 (12)

Each of these complaints arose out of the administration of the tuition waiver programme. The first complaint was brought by a full time staff member who was taking a certificate course through Continuing Education. He had used the programme when taking his degree and was aware that certain limitations applied to the number of courses that could be taken in a given year. He was unsure of how those limits, which were expressed in terms of degree credit courses, would be applied to certificate courses.

He first inquired at his on-site Personnel Office and was advised to contact the central office. There he asked how many certificate courses he could study in a given term. He asked whether certificate courses, being one-term courses, would equate to a three unit degree credit course. This seemed to make sense because they were equivalent in terms of time spent. He was advised that this was so and that he could enroll in up to four certificate courses during the September to April terms.

The complainant did enroll in four courses and completed the appropriate Staff Tuition Assistance Forms and had them authorized by the Personnel Office. In early February and March he received his Statement of Account and noted that he had been charged two "Academic Fee Adjustments" totaling approximately $325.00. He inquired at the Personnel Office, who referred him to the Financial Services Office.

Financial Services advised that he had exceeded the Tuition Assistance limitation and had been charged back the excess tuition. Neither the Personnel Office nor Financial Services were able to refer him to the section of the policy that dealt with certificate courses. Finally, after speaking to a Staff Association representative, he was referred to the passage of the Handbook for Salaried Staff which reads:

> Assistance may not exceed the cost of tuition for an equivalent 3 units or 6 unit degree credit course…

After seeking advice at the Ombuds Office the complainant wrote to Personnel Services asking that they take responsibility for the oversight. Personnel did accept responsibility and paid the amounts owing, plus interest on behalf of the employee.

The second complaint involved a dependant of a faculty member. She had taken two courses for a professional designation, offered through a professional society at the Centre for Continuing Education. The courses were also offered as degree credit courses worth three units each.

She made inquiries about the applicability of the tuition waiver policy and was advised that during the period in question (May-September) she could take the equivalent of six units and applied using the Application for Waiver of Tuition Fees form. She specifically inquired as to whether the policy applied to courses offered through Continuing Education and was advised that it did.

The application was duly authorized and submitted. In June she received an invoice from the Business Office for $1,275.00 representing $400.00 tuition and $25.00 supplementary fees per course. She contacted Personnel Services about the problem and ultimately was able to have another university department pay a portion of the fees equal to the tuition fees applicable to the same number of degree credit courses. The Business Office agreed to waive interest for a reasonable period of time on the balance then owing.

When she approached the Ombuds Office I indicated to her that it would not be reasonable to expect the University to confer benefits above and beyond those allowed for in the tuition waiver policy unless she could establish that, because of her reliance on incorrect information, she had been placed in a worse position than she would have been in had she received the correct information in the first instance. Together we gathered information about other alternatives that might have been available to her had she been advised of the actual costs associated with taking the courses through continuing education at McMaster.

Based upon this information I concluded that the University had tried, as much as possible, to place the complainant back in at least as good a position as she would have been in had she received the correct information at the outset. The cost differences between other courses and McMaster's were not large. I recommended that the complainant accept the University's proposal as being fair, but agreed to look into the difficulties people were experiencing in obtaining reliable information concerning the policy. I also urged her to write to the Director of Personnel Services about her experience.

Because of the similarity of issues raised by these two cases, I met with the Director of Personnel Services. Together we identified several areas of concern. We agreed that improvements needed to be made to the eligibility screening process. The goal, in particular, was to reduce the time it takes to finally determine eligibility of persons and courses for tuition waiver under the policy. To that end, the Application for Waiver of Tuition Fees form has been revised to provide more complete information. In addition, conditions of eligibility for tuition waiver have been added to the reverse of the Application form.

A second goal was to provide a single contact point for faculty and staff wishing to avail themselves of the policy. In this way persons who have had their entitlement to tuition waiver cancelled or reduced will be advised verbally of the decision, along with an explanation of the basis for the decision. It is hoped that in this way misunderstandings will be identified quickly without requiring the person so affected to inquire of several people in two different departments to find out why their account has been debited for a tuition fee adjustment.

Personnel Services has agreed to take sole responsibility for this and has agreed to assist persons with any problems so identified by them.

I had suggested that Personnel develop a staff protocol for dealing with inquiries about the Tuition Waiver policy, to assist in the interpretation of it. The Ombuds Office was advised that a much closer working relationship had been established with Financial Services to assist in the early identification of problems, and also presumably to obtain early, authoritative interpretation of how the policy will be applied in a given situation.

In closing I would like to congratulate Personnel Services on their determined efforts to improve the administration of the tuition waiver policy. This policy is a very worthwhile and well used benefit that staff, faculty and their dependents enjoy and appreciate. The refinements discussed above can only serve to make this benefit more readily accessible and better understood by all those eligible to use it.

NON-CASELOAD ACTIVITIES

A good part of my time is spent on work that is not related to any one or more specific cases or problems. Although there are times of year when case work takes up most of the hours in any working day, there is also time for activities directed at either improving the overall quality of services that the Office provides, or in raising the profile of the Ombuds Office on campus.

In the 1990/91 academic year I attended the Annual Conference of the Association of Canadian College and University Ombudspersons in London, Ontario. I also attended the mid-winter workshop in Ottawa, hosted by Algonquin College in January of 1991. Both of these meetings have full and productive agendas and are an invaluable source of fresh ideas and objective feedback for “stand alone” offices such as ours at McMaster. I also had the opportunity to act as moderator on a panel presentation at the Conference on Campus Mediation Programs in Waterloo in May 1991.

In February last year I was privileged to be able to enroll in an advanced programme in mediation skills, designed for practicing mediators and dispute resolution professionals. This programme was conducted by CDR Associates of Boulder, Colorado and involved a great deal of “hands on” work and strategizing with other mediators and trainers about how to use mediation techniques most effectively in a variety of settings.

I was pleased to be able to publish a number of topical articles in several campus publications, including GSA Today, the McMaster Courier and the Silhouette. Topics included dealing with harassment on the job, grade appeals and an introduction to the Ombuds Office for new students.

I was invited and did attend the disabilities Awareness Week Potential Student Information Day, where I was available to answer questions about the Ombuds Office and its role in assisting individuals with disabilities in accessing resources on campus.

I gave a presentation at the McMaster Security Services workshops in June of last year. There were many interesting questions and the workshop was a great way to meet and talk with each of the officers. By all accounts the presentation was well received.

At the request of Residence Services and the Inter Residence Council I agreed to prepare and present a discussion on the topic of the Liquor Licensing Act and how the "new" legislation would affect alcohol serving and consumption practices on campus. I also addressed and answered questions concerning the potential for civil liability of the University, its residences and residence councils for acts and omissions which occur in relation to the consumption of alcohol. This evening was well attended and a lot of fun to be involved in.

Each of these activities were worthwhile and gave me an opportunity to get out and "build some bridges". I very much appreciate the opportunity afforded me by Security Services, the Coordinator for Services to the Disabled and Residence Services to become involved in a constructive way with their programmes.

Robert Shelton, Ombudsman, The University of Kansas

http://www.ku.edu/~ombuds/questions.htm#top

Faculty Reconsideration of Policy
Negotiation of a Compromise
Faculty Consultation for Improvement in Teaching

These case studies appeared in Robert Shelton's article *The Institutional Ombudsman: A University Case Study.* (Negotiation Journal 16(1): 81-98)

Faculty reconsideration of policy

A graduate student came with a complaint that she had been informed of failure on a qualifying examination. It seemed that the department had initiated a procedure in which the traditional exam now had two parts - a written exam taken by the student, followed by a meeting of the department graduate faculty, without the student present, to determine the competency of the student to proceed. The student raised a rather pertinent question: "How can I fail an 'examination' for which I was not present, and did not take?" She requested that I talk with the faculty involved, and gave me her permission to inform them of our discussion. In contacting the administrative person in the unit, it was determined that it would be well for me to attend a meeting of the faculty and raise the issue with them.

When this item came up on the agenda, I briefly described the situation as it was presented to me, and indicated that if, indeed, the faculty action was a portion of the examination, it seemed reasonable to question how a student could fail an exam not taken. In my brief comments, I indicated that I understood the frustration which graduate faculties sometimes experience when they have a student who seems to perform well enough in courses to receive satisfactory grades, but their overall perception is that the person is not likely to do well on dissertation research, nor perform well in the field.

At that point, one professor rose from his chair, pointed across the room at a colleague, and said "I told you this wouldn't work!" In the ensuing discussion, often heated, it became clear that faculty were not involved in the student's admission to the program, but who eventually were expected to have a major role in the completion of her program, were reluctant to work with her any longer. Others pushed the question of inserting the requirement of a faculty meeting decision into the examination process. The conclusion of the discussion was that they voted to rescind the action requiring faculty vote of approval as part of the examination stage. This action, of course, removed the "failure" and allowed the student to proceed.

The ombudsman's experience within the institution was obviously crucial in opening up this issue in a constructive form. I was quite aware of graduate faculty concerns and attempts to counter their normal desires for a "good guy" image that sometimes results in not being as rigorous as they might in evaluation of course work. Having been a part of many different faculty settings, I was not uncomfortable with their lively disagreements,

and they were clearly aware of that. My *independence and impartiality* were strong factors; not a member of their department, I had no authority over them, nor means to punish them in other settings. (I am confident that, had the Dean of the Graduate School been present, the atmosphere and proceedings would have been quite different.) In fact, having an "understanding" but neutral presence freed persons on several sides of the issue to speak up and move toward conciliating action. Having *investigated* factors in the case, I was able, in succinct ways, to communicate a familiarity with various questions that allowed the discussion to move forward with a minimum of re-hashing. Also discovered in the investigation were ways in which the student was caught in ongoing conflict or procedural differences between some of the staff. As some of those issues began to be displayed, I could communicate a quiet, accepting understanding of such tensions. *Confidentiality* assured them that, no matter what their colleagues might repeat elsewhere, they knew that I was not going to report anything being said to anyone else. Responsibility for recommendations made it easier to respond to requests for suggestions as they began to deal with an obvious necessity of returning to the requirements in place when the student began her program, as well as ways for faculty consultation to be available for appropriate intervention. Once the faculty action was completed, the student's commitment to quality performance increased, with satisfactory completion of the degree, and eventual achievement of a coveted post-doctoral fellowship at another university.

Negotiation of a compromise

An Asian student brought a complaint of having been accused of plagiarism on a major project, with subsequent assignment of "F" in the course and notification of being dismissed from his graduate program. The professor admitted that students were encouraged to cooperate in their research, and was also aware that such cooperation was especially common in many Asian educational contexts. He insisted, however, that the student's use of the material moved beyond acceptable limits, and simply could not be tolerated in the profession for which the student was preparing. My investigation had brought to light that another student whose alleged plagiarism had been discovered was allowed to correct his work. The instructor argued, however, that such would not be suitable for the complainant, because his alleged transgression was discovered in the final submission of the project, not an earlier draft. When attempted conciliation was unsuccessful, the student requested that he be allowed to withdraw from the course, and from the program, rather than have a failing grade on the transcript and a letter of dismissal in his student record. I presented this alternative to the professor and his unit administrator. They refused the request, however, knowing that the student would likely appeal the action to the university's highest appeal agency. At the time the appeal was scheduled, both parties asked the ombudsman to appear at the hearing and requested that I comment on my observations if it seemed appropriate. The appeal board acknowledged that the instructor had grounds for suspicion regarding the project, but concluded that the decision for course failure and program dismissal was excessive. They recommended that the student be retained in the program and that an opportunity be provided to make

corrections within the completion of the course in question. At this point, the student had concluded that future success in the program was unlikely, and continued to favor an opportunity to withdraw. I suggested to the unit administrator that the earlier request be accepted, allowing the unit to no longer have the student in their program, but also to allow the student's record to be freed of their negative claims. They found this to be much more acceptable to them than the appeal group's recommendation, and agreed to allow me to exchange the student's withdrawal letter to them for a change of grade from "F" to "withdrawal" from the course. The student was subsequently accepted into another program within the university, and completed a doctorate degree.

Community recognition of *experience* and *independence* was instrumental in the willingness of the faculty members to talk very freely with me regarding their perceptions of the situation. This was aided, of course by *confidentiality* and *neutrality*. The instructor acknowledged to me the apparent contradictions and inconsistencies in the handling of different students, but felt free to retain personal commitment to those actions. Recognition of *impartiality* undergirded the desire by both parties to have me present during the appeal hearings, both as an observer and as a limited participant. The role of *recommendation* became extremely apparent when the compromise which I had urged before the hearing became much more attractive after the hearing.

Faculty consultation for improvement in teaching

An undergraduate student phoned to complain about the teaching and grading of a science professor in a very large class. It was claimed that the professor expected too much of the students, presented too much material, and demanded much more on tests that the students could possibly do, and thus had to curve the grades. In our discussion, I suggested to the student that I would be in a better position to respond if I heard from some of the other students who the caller insisted were upset. In the next few days, I received more calls, some of them telling me of a leaflet which the original complainant had distributed, urging others to contact the ombudsman. Of those who responded, however, there was considerable variance in evaluation of the instructor's work. Some agreed with the first caller; others were disturbed by the leaflet's inferences, and phoned to support the instructor, claiming that the complaining students just were not willing to do the work.

After collecting a wide range of responses, I looked into the academic backgrounds of the callers. Many of the complainants were new to the university, some having transferred from other schools, and brought rather limited academic records into their experience in this university. Those supporting the professor tended to be students with very good academic records. One thing that became apparent in discussions with all the students was that, whatever their view of this approach, his grading system seemed to lean strongly toward advantages for all students. I decided that it would be useful to have a discussion with the professor, but it would be best to wait until after the semester was over. At that time, our talk focused on the types of both negative and positive reactions

from students, and the implications of their comments for methods used in the course instruction. The professor appreciated the feedback and welcomed the opportunity to reflect on ways in which the instruction methods might be strengthened or altered in the future, to be most helpful to the wide variety of students found in the class. It was true that examinations often covered a range and depth of material that would not be totally manageable by persons who came from weaker academic backgrounds. At the same time, this provided both a challenge to some of the students willing to respond to such a challenge, and an indication of the varieties of student capabilities to work with the course material.

An examination of the curving methods used by the instructor in grading tests supported the earlier impression that low score by students did not necessarily translate into low grades. The tests included the material that the instructor felt should be mastered by persons with moderate backgrounds and capabilities, but grading was restrained by actual scores on the exam, with the high "A's" beginning with the highest numbers attained by the students. Recognizing that this leaves the instructor open to the occasional claim that low scores mean that teaching is not being done well, the professor determined that it is important to do a better job, if possible, of explaining to the students the reasons for selection of the teaching and testing methodologies. An important element in the conference was, of course, the acknowledgment that it is impossible to satisfy everyone, especially in a very large class.

Independence of the office was underlined in student contact and request for investigation, as was the assumption of *confidentiality*. Even though a critic of the professor urged those in agreement to contact the ombudsman, students wanting a different side to be heard certainly expected *impartiality* in their contact with the ombudsman. The professor, likewise, responded to anticipated *neutrality* while wanting to draw on the *community-acknowledged* experience of the ombudsman to be a resource in self-examination. While I found no particular reason, at that time, to *recommend* anything regarding policies and procedures at other levels, the professor was quite open to, and encouraged, any suggestions for improvement within his teaching and grading materials. It is possible, of course, that the information gained in this case may sometime be considered with other information in order to make recommendations to a larger audience.

The traditional elements of the ombudsman role are certainly operative in this organizational position within a university. Although variant in some respects from those offices established by legislative bodies, governmental agencies, or corporate offices, I have found these elements to be basic to the daily work of this ombudsman in a large state university located in the center of the United States of America.

Notes

1. This, and other references to the terms of reference, is found in The University Senate Rules and Regulations, University of Kansas, Article 6, Section 2.

2. Some do question, of course, the capacity of any "insider" to be truly independent. The point being made here is that this institution's culture, at the time, was one in which faculty tended to respond very positively to a colleague who had demonstrated willingness to seriously confront and question customs, rules, and authority when they seemed to counter the goals and basic values of the institution.
3. Perhaps a noteworthy aspect of my teaching is the introduction of a course, over two decades ago, in response to student awareness that most value traditions in human experience consider love to be primary in positive human relationships. This course, called "loving relationships," explores a wide range of human experiences of, and difficulties with, relationships of a personal as well as group nature in an interdisciplinary format. This teaching has led to publications as well as professional workshops.

Ingrid Gadway Clarke, University Ombudsman Emeritus, Southern Illinois University at Carbondale

The University Ombudsman: 100 Cases

100 case studies appear in Clarke's Doctor of Philosophy dissertation *The University Ombudsman: 100 Cases*. I have written to Dr. Clarke inquiring about the feasibility of including the case studies within the collection.

You can order the dissertation through UMI Dissertation Services. Following is the link which includes a full citation and abstract.
(<http://wwwlib.umi.com/dissertations/fullcit/8526675>, 10/23/02)